

**RETAIL TRADING HOURS AMENDMENT (REFERENDUMS) BILL 2004**

*Second Reading*

Resumed from an earlier stage of the sitting.

**MR D.F. BARRON-SULLIVAN** (Mitchell - Deputy Leader of the Opposition) [4.17 pm]: I will divert from my previous comments for two minutes, because during question time the Attorney General displayed the utmost degree of dishonesty in attempting to discredit some comments I made about this Bill earlier today. I have subsequently obtained a copy of the letter from the Acting Electoral Commissioner that the Attorney General referred to. That letter confirms precisely what I said this morning. The letter states that the only advertisement that will be placed in the media about the yes and no arguments will be one in *The West Australian*. With regards to putting the matter into the election guide, which the Attorney General implied would happen, the letter states that there will be an opportunity, depending on timing, to put it in the guide. It further reads that it will “possibly” go in the election guide. That is what the Acting Electoral Commissioner told me yesterday. He said, “Dan, I haven’t got a budget; the Government hasn’t given me a budget for an extensive program” or words to that effect. He said that there would be a full-page advertisement in *The West Australian* with 2 000 words for both the yes case and the no case for each question respectively. That gives a total of 8 000 words, which is what I reported to Parliament this morning. He said that he could not guarantee that there would be anything else. That is what the letter states. There is nothing in the letter to guarantee a further information program other than the advertisement in *The West Australian*. It states that there is an opportunity to put something in the guide - it will possibly be in the guide - but there is absolutely no guarantee. Today, that is exactly what I relayed to Parliament. The Attorney General was being absolutely dishonest in his presentation of the facts. The letter is the evidence in writing.

The question I raised earlier, which a number of people are raising in the community, is this: if the Government is going to blow a lot of taxpayers’ money on this unnecessary referendum, why will it not pose other questions? The sorts of things that people have said they feel strongly about, for example, include the need for mandatory sentencing for crimes particularly against seniors. People say they do not agree with Labor’s approach that enables same-sex couples to adopt children. People want a definitive vote on the issue of gay marriages. People in the medical fraternity have asked me why the Government does not go to the people and ask whether Royal Perth Hospital should be closed in accordance with Labor’s plans. The other issue is Labor’s intention to go soft on drug laws and a whole range of other social policies. People have approached us and said they would like these issues to be included in a referendum. Unfortunately, the scope of this Bill is extremely limited. Undoubtedly this was a deliberate arrangement by the Government, and the effect is that it will be very difficult for this Parliament to extend the referendum legislation to include any other questions. When the member for South Perth moves his amendment it will be interesting to see whether it is deemed to be within the scope of this legislation. I would place a small wager that it may not be, because of the way the Government has framed this legislation. This legislation has been introduced in a restrictive way, again indicating that the Government wants to use it as a political plaything and not as a genuine referendum measure.

It has also been pointed out to me that the referendum refers only to deregulation of trading hours in the metropolitan area. I want to stress what small business knows and understands, which is that if there is deregulation of trading hours in the Perth metropolitan area, it will be only a matter of time before deregulation spreads throughout country Western Australia. Putting it candidly, if Rockingham, for example, is able to trade on Sunday, the pressure will be on Mandurah to open for permanent Sunday trading, then on Bunbury and the whole domino effect will go on. It will only be a matter of time before country WA is completely deregulated. People should not be fooled.

Mr L. Graham: Did you know that north of the twenty-sixth parallel has never been regulated?

Mr D.F. BARRON-SULLIVAN: I am aware of that.

Mr L. Graham: If we vote no in the north west, can we have hours regulated?

Mr D.F. BARRON-SULLIVAN: Good question. I invite the member to ask the Government whether it wants to take into account such intricacies in the current system. Again that demonstrates that when the Government rushes legislation through it cannot take everything into account. Even today it is impossible for the coalition to suggest certain changes, such as the addition of a preamble, because we are still waiting for the Western Australian Electoral Commissioner to obtain advice from the State Solicitor’s Office as to whether that is legal. I will not waste members’ time by moving amendments that may be determined to be unlawful at a later stage. That undoubtedly will need to be considered in the upper House. This raises the question of why the Government is quitting Parliament a week early. Why could we not deal with this legislation at a sensible pace to make sure that a fair and balanced question is asked of the people of Western Australia?

**Extract from Hansard**

[ASSEMBLY - Thursday, 11 November 2004]

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The coalition will not oppose the referendum and, when elected to government, as my leader has said, we will take heed of the results of Labor's referendum. We will accept the will of the people. I want to make the point very strongly that the coalition will push for amendments to Labor's referendum to make the questions fairer and more balanced. In the past couple of days I have had some interesting discussions with Hon Dee Margetts, and just today she has suggested the basis for some changes to the questions. She has suggested a couple of new or amended questions. At the end of the day I think we will see changes to the Government's questions. Labor's referendum questions are lopsided. I think the Premier indicated that he could see the writing on the wall. He knows they will end up being changed; he conceded that yesterday.

We will continue to push for a proper and extensive information program to enable voters to make an informed choice. For example, it is no good saying that there will be an advertisement in *The West Australian*, which is the only firm commitment we have heard to date. Yes, the Electoral Commission will advertise the fact that there will be a referendum and it will tell people how to complete the referendum ballot paper and things like that, but that is not the same as an information program regarding the yes-no case. I have a copy of the letter from the Acting Electoral Commissioner reinforcing the advice he gave me verbally yesterday that the only guarantee of an information program in relation to the yes-no argument is an advertisement in *The West Australian*. I have that letter in front of me. The Acting Electoral Commissioner is considering whether he can put the arguments into the electoral guide containing the maps of all the electorates and things like that, but as of today there is still no guarantee that that will happen. Yesterday he also confirmed that the Government has not provided an appropriate budget to carry out an extensive and balanced information program. That is the sort of dishonesty we get from the Labor Party. It is caught on the run and, instead of presenting the facts and saying that it will consider whether it can fund an extensive information program or whatever, it throws in a personal attack with the most dishonest information possible. I understand that the Government may be arranging to assist the Electoral Commission by providing approximately \$300 000. Again, an extensive program cannot be run for that amount. I am interested to know whether that \$300 000 is the original amount that was referred to by the Government when it announced this referendum, or whether it will be spending \$600 000. The Government cannot have it both ways. If it is to spend a lot of money on an information program and the referendum, that means more money will be taken from the health system, the law enforcement processes and so on; on the other hand, if the Government does not allocate the money, it represents a flaw in the referendum process.

Members of the coalition will not be swayed by political considerations or other inducements. Our policy was enunciated 17 months or nearly a year and a half ago, and we have not swayed from that. Our policy on trading hours has remained consistent. However, one must ask whose agenda the current Government is pursuing. I say that because the Government has flip-flopped all over the place. It went to the election saying that it would not change trading hours, then it said it would deregulate trading hours and then it said it would deregulate only on weeknights or whatever. In September 2001, when the Government said it would not deregulate, the minister said that the Government's position was based on the fact that deregulation would decimate small business. What has changed? On 7 July 2002 he told the *Sunday Times* that the fact that other States were deregulating did not put pressure on WA to consider it, and that we would not be caught up in the fashionable rhetoric of the day. In 2002 Hon Clive Brown said that the deregulation of retail trading hours after 6.00 pm and on Sundays was firmly taken off the agenda by the Gallop Labor Government in its first term. It is firmly back on the agenda with a referendum! In February 2001 the Premier himself said that further deregulation would lead to greater market domination and, therefore, less choice for consumers, and that Labor would retain existing retail trading hours.

The Government has bounced all over the place on this matter. The harsh reality is that it has turned to this referendum measure because, in the lead-up to the election, it wants to create a diversion from the main issues of the growing crisis in our hospitals, the growing crime rate, the fact that the police districts are not operating at authorised strength and other issues like that. The Premier is too cowardly to make a decision and to admit that Labor supports deregulation. In this House I have heard the Treasurer, for example, talk with passion about deregulation. People on the government side clearly show passion and support for deregulation, but they do not have the guts and the nerve to go to the next election with a policy saying, "Vote for us and you'll have deregulated trading hours; we will put small business out of the game; we'll shunt them out and we'll let Coles and Woolies take over." The Government does not have the guts to do that. The Premier is always saying that things are interesting. I have done a little homework and I find it interesting that the Liberal Party and Liberal candidates get donations from a range of businesses - big, small and medium size. Small business is the foundation stone of the Liberal Party, much the same as the unions are the basis of the Labor Party. I am sure the Liberal Party has probably received donations from some in the corporate sector, but we are not dancing to their tune. In fact, the Coles and Woolies of this world are probably not too happy with our policy. However, they will be very happy with the Labor Party's policy. Since 2001 Coles Myer alone has given the Labor Party

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\$233 830. Who stands to gain from the deregulation of trading hours in Western Australia? Is it small business? Who stands to gain from the direction the Government has been taking on this matter? Of course it is the corporates such as Harvey Norman and others that are able to fund professional consultants to go on television - as they did the other day - and so on. It is an interesting fact that the agenda of the Labor Party is - I will not say it - driven by the corporate sector. It is interesting that one major corporation, Coles Myer, which is based outside Western Australia, has given the Labor Party more than \$233 000 since 2001. The Liberal Party's policy is hardly something that Coles Myer will be rapt in. We are not dancing to its tune, but the Labor Party is. When a Coles store moves into an area and takes over from small business, small business goes broke. Families lose their livelihoods. That is the direction the Labor Party is taking.

I would like to know Brian Burke's involvement in this. Even the Retail Traders' Association, part of the Chamber of Commerce and Industry of Western Australia, has been reported as saying that it is ambivalent about the extension of trading hours midweek. The CCI, Harvey Norman and small business groups did not put forward the small business proposal. Did Brian Burke broker a deal? Was the Shop, Distributive and Allied Employees Association of WA involved? Did it suggest to the minister that there should be staged deregulation to satisfy Coles Myer and Woolworths? We now know that Coles Myer is a major contributor to the Labor Party. What is Brian Burke's involvement in this? The minister should come clean today and tell us. Has the minister or his officers had discussions with him? What about the Minister for Small Business or the Premier? Whose idea was this referendum? The referendum was drafted on Monday and something smells about this.

In summary, the Premier cannot make a decision on this to save his life. The Labor Party has flip-flopped on its policy on trading hours since 2001. One minute it wants the status quo and the next minute it wants deregulation and then it wants trading on weekday evenings. It is now opening the door to Sunday trading. This has been a political ploy to draw attention from the big issues in the election, such as the growing crime rate and so on. I am absolutely convinced that the Labor Government has done this for only one reason; that is, as a diversionary tactic. I am confident that Labor's referendum will fail; people will see through it. They will see how much it will damage small business. It is the intention of the Liberal and National Parties to get on with the main issues of the election: the spiralling crime rate, the crisis in health, Labor's appalling taxation record, the fact that the Government has done nothing for schools, its crazy social agenda and the fact that it wants to take away voting rights for country people. We will continue to reveal the arrogance of this Government and we will continue to demonstrate that it is not fit to govern. At the next election we will give the community of Western Australia every reason to choose an alternative - a Liberal-National coalition Government.

**MR W.J. McNEE** (Moore) [4.33 pm]: I agree entirely with the Deputy Leader of the Liberal Party. I know quite well that in its deliberations the coalition will come to a decision that will give a fair go to everyone.

While I am speaking about a fair go I will mention a hack journalist in this town by the name of Robert Taylor. I do not know Mr Taylor; I have never spoken to him. However, he chose to criticise me in his lousy newspaper this morning. That is what he did. I have parrots on my farm that sit and look over the fence like he looks down from the gallery. My parrots are called galahs!

Mr J.C. Kobelke: You have got a gun as well, haven't you?

Mr W.J. McNEE: Yes. I am proud to be called a friend of the member for Dawesville. He is a champion in his own right. The hack journalist, who has a chip on his shoulder, contributes absolutely nothing to this place. I am leaving this place this evening and I must say that I have enjoyed the company of everybody. I have never been a person to push the Press. However, I have been re-elected four times. I throw the challenge to Mr Taylor, if he has the guts and he knows where my electorate is - I have never seen him in it - that he go to my electorate and have a go at me. I welcome him. I hope that it will not be the policy of newspapers in this State to continue to employ hack journalists of the ilk of Mr Taylor.

**MR L. GRAHAM** (Pilbara) [4.36 pm]: I am not sure what a person can do after that! I think I give up.

I will speak quickly on this rather silly referendum. I listened to the rhetoric of the argument. Let us be quite clear. Even if the referendum is held and it is clearly worded and successful, this is not about the deregulation of shopping hours. This is about the re-regulation of shopping hours. Let us not be purist about this. The reason I make that pedantic point is because I happen to live in and represent one of the areas that is truly deregulated. I am in a somewhat difficult position on this issue because one of my friends is one of the Harvey Norman franchisees who is being prosecuted. I sit down with the big fellow and have a yarn with him from time to time. His points are valid. Why can he not open his Harvey Norman shop on a Sunday and sell a barbecue but Bunnings can? It is an incredibly stupid conundrum that we are confronted with and it is an indictment of every consumer and employment protection and fair trading minister in this State for the past 20 years that we have not been able to sort out the nonsense. As much as I hate the swines, why is it that BP shops cannot sell household

goods on Sundays? Why do others have the franchise to do that? There is a lot of nonsense around the fringes of our trading hours debate. I remember the last time there was a serious push for deregulated trading hours. Members will recall that the member for Balcatta - now the Mayor of Vincent - and I always led the Labor Party's charge in opposition to the deregulation of trading hours when the other lot were in government and tried it. We did that out of a genuine belief. The genuine belief is one of market domination. The reason I became involved was twofold: firstly, as I said, my connection to Port Hedland, where I have lived for years in a totally deregulated trading regime. I have watched major retailers act in a way that, if done nationally, would see them dealt with by the Australian Competition and Consumer Commission under predatory pricing provisions. What about market dominance? The major retailers in the major regional areas of the north west of the State used their pricing policies to put the small businesses out of the market and ramp up prices once they had gone. I lived through that. I fought with the retailers at the time. I do not have a lot of friends in the then Charlie Carters and Coles and Woolworths, thankfully, because I do not like that sort of behaviour. I find it unacceptable. Secondly, I have always had a view - I have been a minority of one on many occasions - that the Labor Party is the natural party for small business. The Labor Party that I grew up in had a mentality of supporting the small blokes against the big blokes, and that is a round way of putting its policies. On everything but industrial relations, small business fell firmly in line with the policies of the Australian Labor Party. I was always quite comfortable working with small business people, and for me it was relatively simple. If I had to make a decision to support an issue that meant a major multinational advanced at a great rate of knots, or to support the other side of that decision so that a little Australian business or family advanced at a small rate of knots, I was always happier with the second of those options.

I believe the performance of the major retailers in the north west of Western Australia has been disgraceful. They have been a blight on our towns. Their behaviour has been appalling. I made a submission to the Liquor Licensing Court in Port Hedland when we were bringing in licensing restrictions, and I singled out LiquorLAND for treatment as a disgraceful performer. It was arguably the worst or second worst liquor outlet in South Hedland. It took no responsibility for its actions. I find that performance abysmal.

I understand that this is a political stunt. One of the things I said to the Leader of the Opposition yesterday in a normal conversation was that one of the problems at the moment is that for four years we have had a Government acting like an Opposition and an Opposition acting like a Government. These are the sorts of stunts that Oppositions should pull - except in the minister's case, because he has not been acting; his stunt is real. In this case, the mistake in the stunt is that the Government does not believe that people can vote one way in a referendum and then vote another way on their ballot paper. History is littered with referenda that have been held in which the party has either lost government and the referendum has got up, or vice versa - and vice versa is the most likely.

The second point I make is that I lived through this debate in Parliament once before when we deregulated the petroleum industry; we deregulated the old service station outlets. Some members with long memories will remember neighbourhood service stations that were owned by families. Those members will remember the good old days when people bought a petrol station. Their entire family grew off that petrol station for a couple of generations. They turned it into a business that provided employment for their kids and other people's kids in the neighbourhood. It provided expansion, growth and development for their children to go into other businesses and other walks of life.

We argued with the then minister, Yvonne Henderson, that if we deregulated the industry, the major fuel companies in the world would take over the suburban petrol stations and consolidate them. The price of petrol would not go down. The only result would be a change in ownership from Australians to world multinationals. I am not against world multinationals, but I am against taking businesses off small people and giving them to big people. I would defy anybody to do a serious analysis of what has happened in petrol stations in Western Australia and argue to the contrary. Ninety-five per cent of petrol stations are now owned by the major retailers. Some smart alec from Shell will look at this speech. People do a search, and whenever the word "petrol" is mentioned, they have a look and I get a dirty letter from them. The figure might be 85 per cent. I would not have a clue. However, 25 years ago the major retailers were a minority. They had a minuscule portion of the retail outlets in the metropolitan area. Now the Australian families who own petrol stations are a minuscule portion of the retail outlets. Nobody is putting a contrary argument. That is what amazes me. Nobody is arguing that deregulation or re-regulation will lead to anything other than market dominance by the major retailing outlets. There is complete silence on the other side of that question. No-one is stupid enough to stand and say it will not happen, because in our heart of hearts everybody knows it will happen. I find it repugnant that we will hand our retailing industry lock, stock and barrel to another oligopoly, for want of a better word.

It takes me back to the old two-airlines agreement when, instead of there being genuine competition, we had regulated bilaterals. That is where these things go. They inevitably go to major retail outlets that allegedly

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operate in competition with each other but in fact operate in concert with each other. Whether it is by sitting in meetings in other jurisdictions and setting prices, which I believe happens in the fuel industry, or whether it is by closely monitoring each other and moving their prices up and down with short lag times, the effect is the same; that is, there is no serious competition in the market. The exception to that - there is always an exception - is when there are franchise retailers. That is the Harvey Norman argument that what is an Australia-wide chain is in fact a franchise, and people can own family businesses within that. I do not want to get into the Harvey Norman argument. I know some of the problems that can arise from that. They are complex and quite minuscule issues compared with the effect on our daily lives of total market domination by the major retailers.

I hope that this referendum will end up being no different from any of the others; that is, there will be a bee's hair in the result. There is no clear view in the community one way or the other. People walk into my shop and say, "Gee, I wish I could do this on a Sunday." That is true. We all wish that. We all wish that there was shopping 24 hours a day, seven days a week, and genuine competition. The only place in the world I have ever seen it work is New York. If we had a similar sized market to New York's, we would also be able to support that. However, we do not and we cannot. New York is a major market about the size of Australia, and is also in a free-enterprise country of 250 million-odd people. It is a significantly different market setting.

I believe the referendum will be extremely close. Despite the rhetoric and despite the Government thinking it is on a winner, I believe it will disappear as an issue, except for the major retailers, which will run a heavy big-buck campaign to get a yes vote. I have no doubt about that. They will run a heavy big-dollar campaign to get a yes vote. Of course, the problem for the Government is that if it is returned, it will be bound to implement the wishes of the people. There are some interesting analogies, because prior to the last election it was bound to regulate the price of petrol, and it did not. It chose not to once it was elected.

However, if we take the Government at face value and accept that it will regulate in accordance with the referendum, what will that mean for those of us in country Western Australia? We are required to make a decision and vote. I asked flippantly before: what will be the effect of that decision if everybody in Collie votes that they do not want that trading in Collie? The Government's view is that the results of this will apply only in the metropolitan area. Why? Why can the people of Karratha, Port Hedland, Broome, Dampier or Wickham not vote in a referendum? The votes are counted box by box. Why can the Government not decide, when those people have expressed their views, that it will regulate in accordance with their views? Why must we have one single outcome in Western Australia? It is stupid and extreme centralism. Everyone gets consulted and gets a vote. However, regardless of the circumstances and regardless of how they vote by location, they are all stuck with the same result. That is nonsense. If, for example, the people of Kalgoorlie - I do not know how they would vote - voted 95 per cent in favour of regulating their shopping hours, what would the Government do? Would the Government disregard the views of the people of Kalgoorlie totally and accept the views of the people in the metropolitan area, who have said they do want it? What would the Government do if country Western Australia were to vote no in its entirety and the city were to vote yes? That would be relatively simple for the Government, because it could then say that is what it will do in the city. However, what would the Government do if the situation were reversed and city people voted no and country people voted yes? Will the Government make those sorts of deliberations, or will it just do what the overall majority says it wants? If it is that simple and that is the decision the Government will be making, then this referendum will be a waste of time. People are not concerned about what the shopping hours are somewhere else. Why not have a referendum and determine what the shopping hours should be in New South Wales? New South Wales is as close to the people in Albany as Perth is to the people in Kununurra. Why ask the people in Kununurra? It is a stupidity and a nonsense. It is a centralist stunt. Having said that, like everyone else I will be voting in favour of the legislation, but I will be opposing the questions.

**MR P.G. PENDAL** (South Perth) [4.51 pm]: I will be supporting the Retail Trading Hours Amendment (Referendums) Bill 2004, not because I have any great sense of enthusiasm about it, but because the notion of asking the people and listening to their views is something that should be supported by any small "d" democrat. I believe that there are more important issues that should be taken to the people at the election in February; nonetheless, it is the Government's choice to go to a referendum, and I support that principle.

I have only had two jobs in my adult working life, which spans some 38 years - 14 years in journalism, and 24 years in the Parliament. Neither of those jobs was a respecter of civilised working hours. One of the advantages of journalism compared with politics is that although we might be doing shift work, or working at night, and often on weekends, nonetheless our working hours were restricted to 38 or 40 hours a week. The big disadvantage of politics when compared with my former job is that the hours are not restricted to 38 or 40 hours a week, because we work mostly every night of the week, and frequently on most weekends of the year. I mention those two experiences for this reason. Those two experiences of mine have always made me feel very reluctant to bring about any laws that will impose uncivilised working hours on other people. One of the serious

consequences of a referendum and, secondly, of the extension or liberalisation of trading hours per se, is that as sure as night follows day it will mean that tens of thousands of Western Australians, mostly young Western Australians, will be required to work at night and at weekends. A myth has developed in our lifetime that Australia is a very laid-back nation and Australians are not cast in the mould of hard workers. It is interesting that only recently a United Nations Educational, Scientific and Cultural Organisation survey suggested that Australians are among the hardest working people in the world. I must say I feel awkward about being part of a process that will mean that many tens of thousands of mostly young people, who are already hardworking, will be required to work at nights, and at weekends, all in the name of increased trading hours.

Increased trading hours will not add anything more to the economy. People have only a certain number of dollars to spend. Another myth that has developed is that Western Australia can attract tourists only if we have more liberalised trading hours. Many members of this Chamber who have been to other parts of the world and have had the same experiences as I have had would know that trading hours in Western Australia on the whole are no more restricted or unliberalised than those in most other civilised countries of the world. I have just come back from an arduous three weeks on the French Riviera at Menton and Nice. I should add that that was a privately funded trip. Those places are as sophisticated as any on the face of the earth, yet their trading hours are not dissimilar to those in Western Australia. Frequently my wife and I would walk down a mall or a tiny street at night and find that most of the shops were closed. Therefore it is not accurate to suggest that we need to liberalise trading laws for the reasons that the proponents suggest.

I repeat that I will be supporting the Bill. However, I want to raise two issues that to me make the Bill inadequate. I will attempt to improve one inadequacy in the Bill with an amendment. However, I intend to let the other inadequacy go through to the keeper. The first inadequacy in the Bill is that it deals with only a limited form of retail trading hours. Members may be aware that I have on the notice paper of this House a private member's Bill not dissimilar to a Bill of which I gave notice four or five years ago. The purpose of that Bill is to allow the liquor industry to trade on Sundays for those hours that are currently available to the hotel industry - no more, but certainly no less. That is something that the Liquor Stores Association of Western Australia has been seeking for many years. I will deal with that matter in more detail when we go into consideration in detail.

The second inadequacy in the Bill is that it will only half do a job. Why are we doing this for the metropolitan area only? Why are we dividing the State into two equal parts - or one might say into two unequal parts? The Bill states distinctly that these provisions will be extended to the metropolitan area only. I find it troublesome that we are dealing with a piece of legislation that is discriminatory from that point of view alone. I will return to the issue of liquor. Every argument that we can mount in favour of deregulating the broader retail trading market can be applied to the liquor retail market as well. There is no difference. There is no logic in saying that we want to liberalise retail trading hours but at the same time we want to keep the restrictions on the sale of liquor. No logic can sensibly be attached to that sort of argument. For that reason, I have given notice of an amendment, which can be found at pages 29 and 30 of today's notice paper, to ensure that the people of Western Australia are given the opportunity to answer a third referendum question. The first two questions have been spelt out in the detail given by the Government. The third question that I believe the people of Western Australia should be asked is whether they are in favour of allowing liquor stores to trade on a Sunday for hours similar to those of the hotel industry.

I am the first to admit that my amendment is more liberal than the private member's Bill that I have before the House at the moment. Members who care to compare the two will see that. For example, my Bill sought to extend Sunday trade in the liquor industry to genuine, small, independently owned liquor outlets, and to keep in place the restrictions on the larger multinational operators. The amendment I am proposing to this referendum Bill does not do that, as members will see. Apart from all those things, I support the Bill, principally on the grounds that it seeks at least to go to the people, to have the people's opinions canvassed, and then to have those opinions entrenched in law one way or another.

**MR J.C. KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [5.00 pm]: I thank members for their contributions to the debate, and for the general support this Bill will receive. There is clearly a range of points of view and some criticism of aspects of the Bill, so I will take up just a few key issues rather than try to cover all of them.

Firstly, it was suggested that there is something wrong with this Bill having been drafted this week and rushed through very quickly. If I explain why that is so, members might understand something of the cogency in the Government's position. There are many very real issues and genuine different points of view, but the key issue that drove the Government - not the only one, because clearly politics was a part of it - is the fact that we have successfully prosecuted Harvey Norman. Harvey Norman is a major retailer with substantial resources, and has threatened to challenge the prosecutions and take the matter through the courts. From legal advice given to this

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Government, and from the findings of a committee in the other place some years ago during the time of the previous Government, the current trading regulations are likely to be found by the court to be ultra vires. The result of that would be that we would be prosecuting not only Harvey Norman for its civil disobedience, but also all the supermarkets in our suburbs that trade on Sundays and after hours, and all the stores in the Perth and Fremantle tourist precincts. That is an untenable position for a Government to be in. That was the issue in the forefront of my mind in taking this matter to Cabinet and saying that we could not allow this situation to continue. There must be a resolution.

That is not new; we knew that when we went to a public debate a year or so ago and took all the flak from that issue, and when the Premier and the Government took a hard decision to legislate for an extension to 9.00 pm trading on weeknights. We put a firm position to the people in a Bill that passed through this House.

The ACTING SPEAKER (Mr A.P. O’Gorman): The member for Innaloo is called to order for allowing his mobile phone to ring.

Mr J.C. KOBELKE: That Bill did not involve only the extension to weeknight trading. It had special provisions to protect small business and rectify any problems we may have had with the legal mess left to us by the previous Government when it extended trading hours in a number of ways. The Bill sorted out the problem, but it was thrown out by the Liberals and others in the other place. Hon Simon O’Brien, speaking to the Bill, acknowledged that they were throwing the baby out with the bathwater, and that is what they did. The issue then is that, with the likelihood of major disruption to our entire retail sector if Harvey Norman proceeded with its challenge, the matter had to be fixed. One possible solution was to put a position to the public and then, if the Government wins the election, it can say it has a mandate. I do not accept that that would be enough, given that there are so many disparate and strongly held views. The Government could be in a position of being bound by a superior court decision requiring it to close down shops all over place. It would then have to bring pressure to bear to get an answer through. The best way of doing it is to let the people decide. The position we took - to which the Premier is very strongly wedded - is to not have Sunday trading. He simply wanted the weeknight trading, which is what the majority of members on this side of the House want. The fact is, however, that such a position is not necessarily popular with consumers. Survey after survey has shown that 60 to 70 per cent of consumers want Sunday trading. When there are so many different points of view, and a difficult legal mess that needs to be fixed, if the people make a decision then the Parliament has to accept that decision if a Labor Government is in charge in Western Australia.

The Liberals want to play games with this issue, but I will not enter into that. They have no credibility in this issue at all. However, the problem will be fixed if the people speak and a Labor Government is elected. If the people ask for no change, we will introduce legislation that solidifies the current arrangement in metropolitan Perth and removes the potential legal challenges to that arrangement. If the people vote for a change - either for an extension of weeknight shopping or the adoption of Sunday trading - one or both of those will be in the Government’s package and the matter will be fixed. The people will have a say to determine the substantive issue of the shopping hours, and on the basis of that the current mess can be fixed. When the Liberals and others defeated the Government’s Bill in the other place, they killed certainty, as well as removed a whole range of measures that small business clearly wanted. The referendum is a very clear way of breaking the deadlock. I am not denying that there are other important issues - of course there are - but that is the primary strategy of the Government to fix the problem.

Once that is known, we must have a referendum that will work. In order for the referendum to work, it must include proper questions. There must be enough detail so that people will know what they are voting on, but not huge lengthy tracts that bring every detail in, and there must be a limited number of questions. The position I took to the Government was for only one question, but my colleagues convinced me that two were better, so that people could have that choice. The questions must be to the point, and the Government is willing to talk about how they can be improved, but there is no way that unrelated matters, such as liquor trading or daylight saving, can be dragged in. That is a nonsense, and if the Opposition attempts to do that it is clearly upsetting the Government strategy, which is to get a decision from the people that overcomes the current impasse and gives certainty to all traders. That is why the Government will not accept other questions that seek to broaden the range of issues that might be put before the people. We all know that there is a general tendency to vote against referendums. Spreading the number of questions will spread the potential that nothing will get up. People will get all mixed up with what the issues are. There needs to be a very limited number of questions.

Mr J.L. Bradshaw: Don’t you think the people might reject the questions?

Mr J.C. KOBELKE: If the people reject both questions, then the Government is committed, if it is re-elected, to fix the mess, rather than simply leave things the way they are. The issue I am coming to, though, is that some people are saying that the questions should give people the choice of longer hours or total deregulation. That is a

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valid point, but my reasoning is that if people are to be given a decision that they can take on board and consider fully and properly with all complexities surrounding it, given that the Liberals in the other place have said they will have no change at all, going from no change to very expansive change will produce no change at all. It is not really giving people a choice. We know people want more hours. Survey after survey has shown that consumers want greater choice and extended trading hours. However, if they are given the choice between nothing and everything, the chances are that the decision will be nothing, not a moderate increase, which is clearly what people want.

The next point is that some people have been saying that this is push-polling. What an absolute nonsense! These are straight, direct questions that are not coloured with any emotive suggestions. The Deputy Leader of the Liberal Party suggested a question which would read something like "Do you want to go shopping on Sundays if it means there will be fewer small businesses in the community, and if it will erode family time and have other adverse consequences?" That is push-polling, colouring the question in that way. If we wanted to get into that we could have the other side proposing a question "Would you like to go shopping on Sundays if you knew that there would be no adverse consequences and that it would create thousands of jobs?" That would be push-polling the other way. Any suggestion that there is push-polling in this is arrant nonsense. We do not want to change the form of the questions. We are open to discussion with a view to improving them, if there are reasonable suggestions, but we think that the questions we have devised are appropriate and on the mark. The difficulty we have is that discussions cannot take place through the Deputy Leader of the Opposition. He simply never speaks the truth, and he is always positioning and playing games; therefore, it is impossible to have any rational or reasoned discussion with the Deputy Leader of the Opposition. He came into this Chamber again today and tried to weasel his way around the issue. When talking to Paul Murray on 6PR he said -

Well the Electoral Commissioner has told me that the only plan at the moment is to have one advertisement in the newspaper telling people there's going to be a referendum and putting some information about the yes and no case. Now that's not a comprehensive information program.

A memo from the Acting Electoral Commissioner as of today's date states -

Mr Dan Sullivan was advised of the early intention to adjust the State general election advertising campaign to draw attention to the referendum and then place the 'Yes' and 'No' arguments in newspapers, and possibly the election guide, as outlined in points 3, 4 and 5.

This is what the Deputy Leader of the Opposition was told. Point 3 of that memo states -

My intention in alerting electors to the referendum is to adjust the final 'tag' line with each advertisement (television, radio, print) advising of the State general election and the referendum.

The Deputy Leader of the Opposition said on radio that there would be one newspaper advertisement and nothing else. However, he was told by the Acting Electoral Commissioner that there would be huge amount of television, radio and print advertising, all referring people to the referendum. Again, very clearly, the Deputy Leader of the Opposition said something that was not true. Point 4 in the memo from the Acting Electoral Commissioner states -

In bringing the referendum 'Yes' and 'No' arguments to the attention of electors throughout the State, I intend publishing the arguments (each of no more than 2,000 words) in *The West Australian*.

He is going to publish it in *The West Australian*. He did not say whether it would happen once or 100 times. However, the Deputy Leader of the Opposition said that there would be one advertisement in the newspaper. That is not what he was told by the Acting Electoral Commissioner. Clearly, there will be numerous advertisements in *The West Australian*. Point 5 of the memo, which was also told to the Deputy Leader of the Opposition by the Acting Electoral Commissioner, states -

Subject to the timing of the submission of each 'Yes' and 'No' argument, preferably within 7 days of the writ, there is an opportunity depending on timing, to include the arguments in the State election guide which will be distributed to households in each district across the State in the two weeks before polling day.

The Deputy Leader of the Opposition was told that everyone would get from their polling booth the guide outlining the details, if time permitted. The out "if time permitted" is included if something happens that is untoward or if something happens immediately; clearly there might then be a problem. However, the expectation is that the election be held in February. The Acting Electoral Commissioner told the Deputy Leader of the Opposition that every letterbox in the State would get the details. However, what did the Deputy Leader of the Opposition say? He said -

Now that's not a comprehensive information program.



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This Opposition has a spokesperson who simply does not tell the truth; that is why any discussions on this matter have to be held with people who are reasoned, who have integrity and who address the substantive issues. Fortunately, there are people in the other place with whom we can do that, but clearly we cannot do it with the Liberal Party in this place.

As I have outlined, there are many issues here; it is a very complicated matter. I do not intend to go through that with respect to the substantive issues of shopping hours. The key issue is that we can no longer leave the uncertainty in our laws. The last Liberal Government knew about that uncertainty from a report from a Legislative Council committee. Its then Attorney General said that the last Liberal Government would fix the problem; however, it did not. The Gallop Government brought in legislation to fix the problem, and the Liberals in the other place threw it out. We cannot allow a situation to continue in which we have a law that is subject to challenge and could be overturned to cause chaos throughout the whole retail sector in metropolitan Perth. Good government would not allow it; however, the Liberal Party in government did, because it did not believe in good government. We believe in and deliver good government; we have to fix the problem. To break through the impasse, we need clear, concise referendum questions to give people an opportunity to speak. If we are elected to government, we will act on the results and provide certainty to the retail sector. There is much more to this, but that is the crucial issue that has driven the Government, following the successful prosecutions against Harvey Norman and the possibility of more prosecutions in line with its threat of legal challenge, to act quickly to let people have a say so that the problem can be fixed in conformity with the view of the majority of Western Australians. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

*Consideration in Detail*

**Clauses 1 and 2 put and passed.**

**Clause 3: The Act amended -**

Mr P.G. PENDAL: As members would know, I have circulated a series of amendments that first deal with clause 3 and then seek to insert new clause 5. It would be helpful if I were able to deal with the amendment to clause 3 as a prelude to my amendment to insert new clause 5. Therefore, with the permission of the Acting Speaker (Mr P.W. Andrews), I propose to talk about those two issues together.

In my contribution to the second reading debate, I talked about a serious inadequacy in the questions that may be going to the people in a referendum on the day of the next state election. I identified that inadequacy as a failure on the part of the Government to deal with the broader issue of retail trading hours and, in particular, my belief that the inadequacy is in eliminating or failing to mention any reference to liquor trading hours in Western Australia. I am aware that we are dealing with amendments to the Retail Trading Hours Act. I made the point during the second reading debate that every argument one can make to expand and liberalise general retail trading hours are arguments that one can make for the retail of liquor in Western Australia. It is the Government that is making a virtue out of a desire to ask the people of the State to express a view on something as controversial as the narrower definition of retail trading hours. I do not think we can make a virtue out of that unless we are prepared to look at that other section of the retail trade whose members are denied the chance to sell their product on a Sunday alongside a hotel, and the liquor-buying public who, on the other side of that coin, are denied the right to buy those products in liquor stores on a Sunday, which is at the same time that we apparently want to give supermarkets the opportunity to sell their products. I am not seeking to put these people or this section of the economy on a better footing than anyone else. However, nor do I seek to put them on a worse footing or an inferior level. There is every indication that consumers want the opportunity to purchase alcohol on Sundays, other than through hotels. This anomaly is, by definition, an absurdity. It means that I can go to the Como Hotel liquor store on Sunday within the certain hours that that establishment chooses to open. However, I cannot go in the opposite direction by about 300 metres and call at my local liquor store. That trader is prohibited by law, and the imperative is as much on this Parliament for that to be liberalised as is the imperative for the liberalisation of retail trading hours. For that reason, I intend to move the amendment standing in my name.

*Speaker's Ruling*

The ACTING SPEAKER (Mr P.W. Andrews): This is probably the most appropriate point to draw to the attention of members the ruling by the Speaker. I believe that the member for South Perth has had discussions with the Speaker about this matter. In relation to the proposed amendments to the Retail Trading Hours Amendment (Referendums) Bill 2004, the Speaker has provided me with the following words -

Members

My attention has been drawn to the proposed amendments to the Retail Trading Hours Amendment (Referendums) Bill 2004 listed on the notice paper today and proposed by the member for South Perth.

The proposed amendment raises two questions -

- (1) whether the amendment falls within the scope of the Bill; and
- (2) whether a further message from the Governor recommending the purpose of any necessary appropriation would be required for the amendment.

Standing Order No 177(1) reads as follows -

Any amendment may be moved during consideration in detail and to any part of a bill, provided it is within the subject matter of the bill or pursuant to a motion on notice to extend the scope of the bill.

Earlier Speakers' rulings have noted that in determining the scope of a Bill, the Speaker will look to the terms of the Bill itself and may well use the minister's second reading speech and indeed other speeches for some guidance where the issue is not immediately clear. In some cases, the long title of the Bill may be a relevant matter in determining the question, but that is not always the case.

The Bill as it stands will insert at the end of the Retail Trading Hours Act 1987 a new section that requires two referendum questions to be put at the next general election. These questions will ask whether general retail trading hours should be extended.

The amendments proposed to be moved by the member for South Perth will insert a stand-alone provision in the Bill, not to be inserted in the Retail Trading Hours Act, which requires a third referendum question to be put. That question will ask whether trading hours should be extended for liquor stores.

The three questions look similar in that they are dealing with retail trading hours. I note, however, that trading hours for general retail shops and trading hours for liquor stores are dealt with in separate pieces of legislation. Subsection (4) of section 4 of the Retail Trading Hours Act specifically provides -

Nothing in this Act affects the sale or supply of liquor at licensed premises under the *Liquor Act 1970*.

One of the reasons for that is there are a number of issues surrounding trading hours for liquor stores which do not apply to general retail trading hours.

On balance, I consider that the Bill before the House is specifically directed to general retail trading hours only and plainly and deliberately is not directed to liquor trading hours. I, therefore, rule that the amendment by the member for South Perth falls outside the scope of the Bill, and is therefore out of order.

The remaining question of whether a further message from the Governor is required does not therefore need to be decided at this time.

*Standing Orders Suspension*

Mr P.G. PENDAL - without notice: I regret the ruling, but I was given some indication that there could be a difficulty. In the light of that, I move -

That so much of standing orders be suspended as is necessary to enable the following amendments to the Retail Trading Hours Amendment (Referendums) Bill 2004 to be moved.

In speaking to that, I want to effectively move past the proposed amendment to current clause 3 and to deal with what would have been a proposed new clause 5 in my efforts to have the scope of the Bill widened. I do not intend to reproduce all the arguments, but I want to dwell on one or two things that are important. For example, should the House agree to my move for the suspension of standing orders, I will move the following, which is relevant to the ruling just given. My new clause would read -

Page 4 after line 15 - To insert -

**5. Further referendum question**

- (1) The following question is to be submitted to the electors under and in accordance with the *Referendums Act 1983*, on the same day as the questions specified in section 43 of the *Retail Trading Hours Act 1987* -

“

**Extended liquor shopping**

Are you in favour of trading hours being extended to allow all liquor stores to trade on Sundays (except for Christmas Day or Anzac Day) between the hours of 10 am and 10 pm?

”.

- (2) When an elector is voting at the referendum as to the question specified in subsection (1) -
- (a) if the elector is in favour of trading hours being extended to allow all liquor stores to *trade* on Sundays (except for Christmas Day or Anzac Day) between the hours of 10 am and 10 pm the elector is to place the word “Yes” in the space provided on the ballot paper for the answer to that question; or
  - (b) if the elector is not in *favour* of trading hours being extended to allow all liquor stores to trade on Sundays (except for Christmas Day or Anzac Day) between the hours of 10 am and 10 pm the elector is to place the word “No” in the space provided on the ballot paper for the answer to that question.

There are a number of other smaller and consequential amendments, but that is the essence. If we are serious about asking the public of Western Australia to go to the trouble of voting in a statewide referendum on liberalising retail trading hours in Western Australia, it would be an absurdity to do the job by half. The other half of the job would remain undone unless the House agreed, firstly, to the suspension and then to the amendments I have foreshadowed. If it does not agree, we will be leaving the State in a position in which the people are being asked half of the relevant question. I know that the issue of retail trading hours is a divisive one. I have seen the mood of the House change in the past 24 hours, as people bare their teeth at each other and express contrary opinions.

In many respects this is not the most important, or anywhere near the most important, issue for the Parliament or the people to be considering, but that is another question. I have spent too long in this place not to know that we frequently spend hours on matters that do not count, and mere minutes or sometimes even seconds on matters that are of real consequence. However, in the overall scheme of things it could be said that this is, at best, a controversial issue and therefore it justifies the Government’s decision to go to the people and ask them for permission to liberalise retail trading hours, essentially for supermarkets. How we can do that with any sense of logic and not extend that to the other part of people’s consumer and shopping lives, I am at a loss to understand. We know, for example, that liquor sales per se are on the rise. In this State we take exceptional pleasure and pride in the production of premium grade wines for export around the world. Although there are always some downsides, with the abuse of alcohol and other things, in the main the majority of people do not abuse alcohol and therefore entrench it as part of their lives. It enriches the lives of most people, but naturally it causes a few problems to a small percentage. That being the case, how absurd is it that something as entrenched as that in our daily lives should be further restricted at the very moment in our history when we want to liberalise other allied trading laws? My argument goes no further than that. If the Government wants to do the job properly, it should ask the third question, which I have provided tonight. I suggest it might even take the sting out of a very difficult political issue for both sides of politics, because if it were not a difficult issue to decide it would have been decided a long time ago. It is therefore essentially an invitation for the major parties to say that they will take the lead of a non-party person in this place - an Independent - who has given them the opportunity to resolve a very difficult question.

For those reasons I ask that the House seriously consider suspending standing orders the House and me to expand the scope of this Bill. It is an opportunity that will come but once every 10 years. To pass up that opportunity now will mean that for another 10 years both sides of politics will continue to be confronted with a problem that has never been solved, and here is part of the solution. I commend the suspension of standing orders and the subsequent clause to all members.

MRS C.L. EDWARDES: All members in this Parliament have a right to be heard. We believe that this is clearly the Government’s legislation - it is the Government’s referendum - and, as such, if it wants to put forward only two questions, it should wear any odium that arises. We will support the member for South Perth on his motion for a suspension of standing orders.

MR J.C. KOBELKE: The Government will not support the suspension of standing orders. The matter raised by the member for South Perth is a very real issue. Consideration does need to be given to liquor licensing and particularly the hours during which liquor can be sold. There is another process for dealing with those issues, and resources will be applied to not only looking at the hours during which liquor stores can trade but also a

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range of matters relating to liquor licensing. That process will proceed and those matters will be taken up in that process. The other reason, which I have already touched on, is that if we bring that unrelated matter into this as a referendum question, it will undermine the primary rationale for the referendum, which is to let the people decide how to unravel the current mess in shopping hours in metropolitan Perth. Including this question in the referendum has the potential to undermine that process. On that basis we do not think this is the right way to go, and we will not support the suspension of standing orders to get around Standing Order No 177, which was put there for a very good reason. No argument has been put for it to be overturned.

The ACTING SPEAKER (Mr P.W. Andrews): This is a motion, without notice, to suspend standing orders. There being a dissenting voice, it is necessary to divide the House.

Question put and a division taken with the following result -

Ayes (18)

Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mr L. Graham	Mr A.D. Marshall	Ms S.E. Walker
Mr M.J. Birney	Mr B.J. Grylls	Mr P.G. Pandal	Mr J.L. Bradshaw ( <i>Teller</i> )
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr M.W. Trenorden	

Noes (23)

Mr J.J.M. Bowler	Mr S.R. Hill	Mr M. McGowan	Ms J.A. Radisich
Mr A.J. Dean	Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts
Mr J.B. D'Orazio	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Dr J.M. Edwards	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Dr G.I. Gallop	Mr F.M. Logan	Mr A.P. O'Gorman	Ms M.M. Quirk ( <i>Teller</i> )
Mrs D.J. Guise	Mr J.A. McGinty	Mr J.R. Quigley	

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Pairs

Mr R.A. Ainsworth	Mr P.B. Watson
Mr P.D. Omodei	Mr E.S. Ripper
Mr M.F. Board	Mr B.K. Masters
Mr W.J. McNee	Mr A.J. Carpenter
Mr J.P.D. Edwards	Ms A.J. MacTiernan

Independent Pairs

Mr B.K. Masters  
Dr J.M. Woollard

Question thus negatived.

*Consideration in Detail Resumed*

**Clause 3 put and passed.**

**Clause 4 put and passed.**

**Title put and passed.**

*Third Reading*

Bill read a third time, on motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection), and transmitted to the Council.