

LIQUOR LICENSING AMENDMENT BILL 2001

Second Reading

Resumed from 22 August.

HON BARRY HOUSE (South West) [3.07 pm]: In my introductory remarks yesterday I canvassed some of the issues in the Liquor Licensing Amendment Bill. Before I continue on those issues I ask the Minister for Racing and Gaming why this Bill was introduced into the other place when the responsible minister sits in this House? There could be a perfectly legitimate reason for this, but the Minister for Racing and Gaming should take some priority when legislation in his portfolio is introduced into the Parliament.

Hon N.D. Griffiths: This is the second Chamber, which should review legislation from the other place where the policy is set. That does not always occur, but as a matter of practice that should occur. I hope it will occur more often than not.

Hon BARRY HOUSE: That is staggering.

The PRESIDENT: Order! This is not a question and answer period.

Hon BARRY HOUSE: The minister's explanation alarms me.

Hon N.F. Moore: Perhaps we could ask the three ministers to sit in the other place.

Hon BARRY HOUSE: It is staggering that this minister considers himself junior or inferior to a minister in the other place.

Hon N.D. Griffiths: This is a House of Review. If the Government's legislative program requires that a Bill be introduced in this House it will be, but where it can be done Bills should be initiated in the other place. That is where the policy is set. This Chamber purports to be a House of Review; let it act as a House of Review.

Hon BARRY HOUSE: That is one issue over which we will seriously disagree. The Minister for Racing and Gaming is responsible for this portfolio; surely he should lead the debate in the Parliament. We are as much a part of the Parliament in the broad sense as the other place.

Hon N.D. Griffiths: You are setting up a new role for the Legislative Council.

Hon BARRY HOUSE: This is not the subject at hand, Mr President, but if the three ministers believe that, they should resign their commissions forthwith and sit -

Hon Ken Travers interjected.

The PRESIDENT: Order! The parliamentary secretary should come to order.

Hon BARRY HOUSE: I am sure we will have a bit of fun with that during the months ahead.

Hon Tom Stephens: The concept of this House being a House of Review?

Hon BARRY HOUSE: No.

Hon Simon O'Brien: No, the concept of the ministers being unable to take responsibility for the introduction of their own Bills.

The PRESIDENT: Order!

Hon BARRY HOUSE: Returning to the substance of the debate, even though the minister is happy to be second in line in terms of responsibility for the Bill -

Hon N.D. Griffiths: What a stupid comment.

The PRESIDENT: Order!

Hon BARRY HOUSE: The issue I raised briefly last night related to a recent incident involving a crowd controller - a bouncer - at Northbridge and a young man who was seriously injured in that incident. I raised that issue because this sort of thing is in the legislation. I mentioned that where rights are inferred, responsibilities should follow.

I know Hon Christine Sharp will move an amendment along these lines. I have had some preliminary discussions with her. As I understand it, her concern is a valid one, and I know she will enlarge on that later. If her concern about the removal of the responsibility away from the licensee is based on what is happening, it is a valid concern. I am not sure that that is the case, but we will hear more about it from the minister during his response.

A related issue was highlighted in this morning's *The West Australian* in an article headed "Nightclubs face tough video security rules". The article states -

Liquor licensing authorities are drafting tough security guidelines for Perth's nightclubs after it was revealed that missing video footage had thwarted some police investigations into bashings.

Compulsory video surveillance as part of liquor licences has the support of Perth's top police officer, Supt Ron Carey.

The article mentions the racing and gaming minister -

... Nick Griffiths said he understood the director of liquor licensing was looking into the issue of security cameras in nightclubs.

Due to the topicality of that issue and its relationship with one section of this Bill, I would welcome comments about video surveillance and its effects on liquor outlets during the minister's response.

Hon N.D. Griffiths: When you raise serious issues I intend to issue a very full response.

Hon BARRY HOUSE: I look forward to a very full response. Last night I started to raise some general issues about the liquor industry and the impact of alcohol availability and sale in this State. The first issue I raised was in relation to restaurants and catering services, and that was the 20 per cent rule. That issue is of concern to some restaurants because they consider it impractical and not conducive to good service - and that is what they want to provide. I welcome debate about that provision of the legislation over the next few months and years.

Another issue I briefly referred to last night was the cost involved in applying for a licence due to the adversarial nature of the system. Applicants must respond to representations made on behalf of other people, and often those representations are made by highly qualified and highly paid legal representatives. The costs involved in that application process can become enormous for small operators, and that is a real issue for them.

Another issue about which I would like the minister to respond is the definition of "tourist". This piece of legislation relates to special facility licences. The origin of those licences goes back to a decision to make them available for tourist-related purposes. I understand that in the regulations there has been a realignment of the definition of "tourism" to fit in with the definition from the Western Australian Tourism Commission. That definition relates to where a special facility licence may be granted under regulation 9A(1)(h). This is going back to 1989, and it is worth reading -

Tourism, authorising the sale of liquor to persons likely to be attracted to, or present at places or premises that, in the opinion of the licensing authority are or will become -

- (i) a tourist attraction; or
- (ii) a facility that enhances the State's tourist industry,

In the preparation of this legislation, the Tourism Commission was consulted and parliamentary counsel drafted an amendment to regulation 9A to incorporate a definition of "tourist" along the commission's lines. This was gazetted on 17 July 2001. That definition of "tourist" under the subsection "an attraction for tourists" is -

"**tourist**" means a person who is -

- (a) staying at a place that is at least 40 kilometres from his or her usual place of residence for a period of at least one night;
- (b) intending to stay away from his or her usual place of residence for a period of less than 12 months;
- (c) not in the course of travelling on a regular journey between his or her usual place of residence and his or her place of work or education; and
- (d) travelling in the course of a holiday or for leisure, business, to visit friends or relatives or for any other reason.

In many instances people may find that definition restrictive. How about, for instance, people who are involved in business meetings and who might meet for a glass of wine or a meal with alcohol? How about a sporting group that might drop into a hotel after training? A hockey group, for instance, might play a game of hockey on artificial turf at night under lights and then drop into a hotel in the suburbs or in their country town at 11 o'clock, or they might drop into a restaurant after their game. How about a tourist from across town in Perth? This definition will preclude people from Perth who go to Fremantle to dine as a tourist - because the legislation allows Fremantle as a tourist precinct, that may not apply. If they go to a restaurant in Cottesloe they would not be classified as tourists. People from Boulder who go to Kalgoorlie will not classify as tourists, and people from Australind who go to some of the new tourist facilities at Marlston Hill in Bunbury will not classify either. In some cases the definition of "tourist" may be too restrictive and defeat the purpose for some of the people

involved in the industry. The minister may be able to assure me that that is not the case; and, if he can, I will be assured.

Hon N.D. Griffiths: If I assure you, you will be assured!

Hon BARRY HOUSE: I guess I am assured by the knowledge that if that presents a problem, the regulations can be changed.

Hon N.D. Griffiths: One of the good things about regulations is that they provide a degree of flexibility; and if you have any concerns, I want you to raise them with me so that I can give them consideration.

Hon BARRY HOUSE: That is what I am doing. If the definition of “tourist” turns out to be too restrictive for sections of the liquor industry, as I fear it may, then I ask the minister to look at that definition and make it inclusive rather than exclusive.

Hon N.D. Griffiths: The matter is under constant review, but if you have any concerns subsequent to this legislation being dealt with, I will be happy to deal with them. You have given me a list of concerns, and when this matter is disposed of one way or the other, I will always be happy to hear from you.

Hon BARRY HOUSE: I will continue to do that while I have responsibility for this portfolio.

Hon N.D. Griffiths: You are a constructive opposition spokesperson and I want to encourage you in all ways.

Hon BARRY HOUSE: That is terrific. Harmony breaks out!

Hon N.D. Griffiths: Don’t go too far!

Hon BARRY HOUSE: In the further development of liquor laws it would be healthy for this State if we could have a bipartisan view on some of the major issues and perhaps also the minor issues.

Hon N.F. Moore: You might even ask some of the consumers what they think.

Hon N.D. Griffiths: I think I am looking at some!

Hon BARRY HOUSE: Another issue I want the minister to take on board is that some sections of the community fear that the proposed changes in this Bill to the availability of special facility licences may preclude many worthy applicants. I do not know whether that will be the case, but I ask the minister in his response to reflect on a hypothetical situation. I will not mention any names, but this situation relates closely to a real situation. An application for a special facility licence may be made by a restaurant-cafe in a new waterfront development that is part of a new residential tourism precinct in a regional town. That cafe-restaurant will serve à la carte and casual cafe-style food. It will also have an outdoor area that is adjacent to a children’s playground. It wants to have the facility to serve a beer, a gin and tonic or a glass of wine to people who are passing by on the promenade or are watching their children play and who may or may not be contemplating having a meal. I suggest that cafe-restaurant is a worthy applicant for a special facility licence, and I want the minister to tell me in his response whether the amendments that are proposed in this Bill will preclude applicants of that nature from obtaining a special facility licence, because, if they will, I believe they are too restrictive.

Hotels - and this may apply also to taverns - want to be assured that they will have reasonable avenues to obtain extended trading permits to their licence, if and when that is required, so that they can provide service until 3.00 am or even 4.00 am.

Hon N.D. Griffiths: I remember the history that you read out last night - 4.00 am to 10.00 pm, was it not?

Hon BARRY HOUSE: They opened at 4.00 am. We are talking about closing at 4.00 am.

Hon N.D. Griffiths: They will close at 4.00 am and reopen at 4.00 am!

Hon BARRY HOUSE: If we get to that stage, we may as well deregulate the whole thing.

Hon N.D. Griffiths: Is that what you are advocating?

Hon BARRY HOUSE: I am just flagging a few scenarios. I have given some examples of hotels in the inner city of Perth that serve the tourist industry. Those hotels may want to provide a glass of wine for people who have just arrived on a plane from Germany at 2.00 am, for example; or for late night diners or theatregoers. They may also want to provide for people who, when the door of the hotel shuts bang on midnight, do not want to progress to an ear-thumping nightclub, because that is not their scene, but want to be able to enjoy a drink for another couple of hours, in a civilised manner. As I mentioned last night, society is changing and is becoming more globalised and more of a 24-hour society. Not all hotels will want to cater for that market. It may be viable for hotels in tourist locations, such as Kalgoorlie or Margaret River, but obviously it will not be viable for hotels in remote locations, so they probably will not even consider it.

Applicants for an extended trading permit currently rely on the discretion of the Director of Liquor Licensing. However, the director is loath to provide a permit beyond 1.00 am. A number of applicants have been successful on appeal. However, it would not need to get to that stage if this Parliament, through the minister, could provide the right words to give comfort to the director to grant that extra facility for those hotels that desire it; and, if that facility could not be provided, there would be a good case for saying that these amendments will be too restrictive for some of the people who want to use them. I hope the minister will address that in his response.

Hon N.D. Griffiths: The industry accepts, as do you, that we are dealing at the moment with special facility licences, but I agree that the issue of extended trading permits is related and certainly needs to be addressed in an appropriate way, and I will go through the steps that we have taken.

Hon BARRY HOUSE: It will be very important for some organisations that want to provide that service.

Hon N.D. Griffiths: In the end, not everybody will be pleased, but that is life.

Hon BARRY HOUSE: Sure. Another issue I want to embrace concerns clubs. Many clubs in Western Australia are doing it tough. A series of factors has caused many clubs to suffer economically over the past few years. Many clubs that were professional organisations are now reliant on volunteers. They have had to scale back their operations, which has not been good for their membership or for the future viability of their centre. In many cases, those clubs have magnificent facilities that are very much under-utilised.

Some clubs in Western Australia want a better opportunity to operate as function centres, providing a service to the community at large and not merely to their members. That can be done to a limited extent at the moment when they apply for specific extended trading permits. They must apply each time they want an extended trading permit, whether it be for a function such as a wedding, a twenty-first birthday party or something else, and they get only four permits a year. Nothing in the legislation lays down the reason that they get only four permits a year. That seems to have evolved from somewhere as a convention or a broad policy of the Director of Liquor Licensing. If there is no particular reason for restricting these clubs to four permits a year, the Opposition wants to hear about it in the Parliament. I do not think there is any reason for restricting these clubs to four permits a year. While four permits may suit one club, another club might not want any permits, and another might want 35. The situation will be different for each club.

Some of the yacht clubs around the river and at Hillarys have magnificent facilities. Bowling clubs in all parts of Western Australia are suffering at the moment, and they may wish to open up their facilities for other purposes at various times. Therefore, I am comforted to know that the minister will address that issue.

Clubs WA floated the idea - I know that it circulated every member of Parliament with this idea - of an amendment to the legislation, which would allow it to achieve the objective that is stated in the original legislation. That objective, according to Clubs WA, is -

To clarify that, in determining whether or not a licence of another class would achieve the purposes for which the special facilities licence is sought, consideration must also be given to an extended trading permit issued in respect of a licence of another class,

Clubs WA has extrapolated from that and considers that if a few extra words were added to section 60 of the Act, it could achieve its objective. Under section 60(4)(cb), the director can grant extended trading permits for specific days or specific occasions, and this is currently restricted to four individual applications by a club each year. Clubs WA's proposal is that the words "for a specific purpose" be inserted after the word "liquor", so that section 60(4)(cb) would be amended to read -

authorising the licensee of a club licence to sell liquor for a specific purpose on a specified special occasion or a day on which a specified function is held on, or on a specified part of, the licensed premises, to persons other than members, or guests of members, of the club, notwithstanding section 48(2);

That was Clubs WA's proposal. It discussed it with members of the Liberal Party and me. Its purpose is to try to obtain a permanent approval, I suppose, for an extended trading permit, as long as it is related to a specific purpose.

Although I have some sympathy with Clubs WA's plight regarding unused or under-utilised facilities, I discussed the matter with a number of people and we decided that we would not take up that cause and move the amendment during this debate - we would certainly discuss the issues involved - because, in a general sense, the issue has not been widely canvassed in the industry and in the community.

Hon N.D. Griffiths: There are many issues relating to liquor that can be dealt with on an ad hoc basis. We are dealing with a small number of issues in this Bill, but many other issues need to be addressed.

Hon BARRY HOUSE: Here the minister sees a responsible Opposition in action.

Hon N.D. Griffiths: I look forward to working with you and other members in the House in dealing with these issues in an appropriate way.

Hon BARRY HOUSE: Obviously, this issue will be debated, as will all the liquor industry laws. However, we came to the conclusion that this issue had not been canvassed widely and discussed openly within the industry and in the community. It may have some consequences, which will have the effect of opening up many facilities so that they will virtually become hotels. I do not think the community has had enough time to consider that aspect.

Hon N.D. Griffiths: In dealing with these matters, it is important that there should be fairly broad consensus. We cannot please everybody, but most people concerned with the industry must be happy with what is taking place.

Hon BARRY HOUSE: The minister is right that we can never please everybody. However, in going through the history of the evolution of liquor laws last night, it was interesting to note that this State started off with criteria attached to providing a service for the public, and it was an offence if people did not provide that service in the provision of liquor. Over the 180-odd years of this State's history, somehow or other that purpose has been subjugated to other criteria, and maybe it is not given as much prominence as it should be given.

Hon N.D. Griffiths: That is a valid point.

Hon BARRY HOUSE: I am sure that the minister is aware of Clubs WA's position. We discussed its position on poker machines. It is a difficult debate, because it is a sector of the community that is suffering economically because of social changes.

Hon N.D. Griffiths: Some are and some aren't.

Hon BARRY HOUSE: Sure. However, many of them are struggling under the weight of some of the issues with which they are being forced to deal.

My last point is that when the clubs involved must seek individual permission for extended trading permits under section 60 of the Act, it is a cumbersome and sometimes restrictive mechanism. Who says that there should be only four permits a year? I do not think that it is fair to say that. If the Parliament believes that in certain circumstances more than four permits should be issued, it should say so, so that the director will be able to exercise his discretion in that respect.

In summary, I have mentioned that the Opposition supports this legislation, which will protect the integrity of the current licensing system. It closes loopholes, whereby the spirit of the Act has obviously been distorted in some cases. However, several loopholes remain which deny people access to liquor licences and restrict liquor availability to the public. I mentioned that, initially, the liquor laws were enacted to ensure that the public was provided with a service when required. I hope that we do not lose sight of the reason for having liquor laws in this State when considering the other points that have been stated. The major debate on liquor laws is still to occur in the community. The catalyst for that in many respects will be the national competition policy review, to which the Government must respond. That may open up issues for much community debate in the next few years. The minister can set the course for the liquor industry by responding in full to many of the issues I have raised, and I look forward to his response, which I understand will occur next week.

HON M.J. CRIDDLE (Agricultural) [3.41 pm]: Hon Barry House referred to the need for a service at the airport. I raised that matter with the minister recently, and I also mentioned boutique breweries and the opportunity for people to have access to alcohol. I note that the Bill is about a classification system to redefine access to special facility licences. Perhaps the minister will indicate now that that system will not infringe on those licences. There is an opportunity for such a licence, particularly at the Geraldton airport, because everybody who comes and goes from that airport could do with a drink. It would be pleasing to see a local person providing that service. Although some people have doubts about this change, most of the members in the industry, hoteliers and the Western Australian Hotels Association have clearly indicated that they are keen to see this legislation passed. I am supportive of that provided it does not become too restrictive.

Members sometimes get a little carried away in their speeches in this Chamber. Hon Barry House made a point about tourism and the like. We are a changing community. Opportunities exist for facilities to be open many longer hours, particularly in areas along the coast. That would be welcomed in the local towns I visit - Geraldton is one - that close down everything at nine o'clock and one cannot even get a feed, let alone a drink. People should be able to have a drink with their food, as they complement one another, and enjoy themselves late into the evening.

Can the minister tell me why there is an exception to heritage-listed premises? I welcome the provision allowing the sale of packaged beer and the repeal of the requirement to dispose of packaged liquor. However, one of the issues that concerns me is the definition of "authorised person" and the impact that may have on the power of the

refusal of entry and the removal of persons from licensed premises. We must be well and truly aware that a responsible person must be on the premises at all times when people are working in a licensed area. Obviously the responsibility must be sheeted back to someone who is in control of the premises and the Bill must clearly define whether that is the manager or licensee of the premises. We must be clear about where that responsibility lies. We have seen evidence lately of the grave danger of over-zealous people being involved in refusing people entry to and removing persons from licensed premises. That crucial area must be addressed. I understand that other members will talk about that issue. However, by and large, the National Party is happy with the legislation and will be supporting it.

[Continued on page 2914.]

Sitting suspended from 3.45 to 4.00 pm