

TOBACCO PRODUCTS CONTROL BILL 2005

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Ken Travers) in the chair; Hon Sue Ellery (Parliamentary Secretary) in charge of the bill.

Clause 23: Defences in relation to certain display requirements -

Debate was interrupted after the clause had been partly considered.

Hon HELEN MORTON: I agreed to not proceed with amendments 11/23 to 15/23, which I had listed on the supplementary notice paper, after the parliamentary secretary gave us some assurances about those amendments. During the suspension I looked very closely at the area to which that applies. Is the definition of a “50% retailer” necessary given that the parliamentary secretary has given an absolute assurance that an individual or a corporate entity does not have to have been conducting the business on 1 July 2005? If someone else purchases the business, paragraph (b) of the definition of a “50% retailer” will assure the intent of the bill; that is, a retailer is a 50 per cent retailer if at 1 July 2005, 50 per cent or more of the average gross turnover of the business was derived from the sale of tobacco products. Similarly, I believe paragraph (a) of the definition of “specialist retailer” is also unnecessary, given the assurance that the parliamentary secretary has provided. Can paragraphs (a) of the definitions of “50% retailer” and “specialist retailer” be withdrawn, given the parliamentary secretary’s assurances now that there is no need for that part of the definition?

Hon SUE ELLERY: We do not propose to delete paragraphs (a) or (b) under either of the definitions to which the member referred. They are required to provide clarification for existing businesses. For that reason, they must remain in the legislation.

Hon HELEN MORTON: I do not understand. Paragraph (b) of the definition of “50% retailer” states -

at 1 July 2005, 50% or more of the average gross turnover of the business was derived from the sale of tobacco products;

That picks up the situation for an existing business. The point I am trying to make 100 per cent clear is that a person who has not previously been conducting such a business and who buys such a business on or after 1 July 2005 will automatically continue to operate as a 50 per cent retailer so long as he is licensed. The guarantee that the parliamentary secretary gave that that was the case seems to make paragraph (a) unnecessary, because it is covered by paragraph (b).

Hon SUE ELLERY: The best advice available to me today is that, for legal reasons, this provision needs to remain in the clause. I cannot agree today to delete it. However, if we were to defer consideration of clause 23(1), we could then seek advice from parliamentary counsel - who are not present today - about why that particular form of words is needed. That does not alter the meaning of the exchange we had before the break about what it means. I note that the member used the word “automatically” when she described the case of someone selling a business. We need to be careful that we do not use the word “automatically” because a person must meet the conditions of the last -

The DEPUTY CHAIRMAN (Hon Ken Travers): I suggest that we move on and deal with the amendments to this clause standing in the name of the parliamentary secretary. Depending on the time, if we get to five o’clock and we have still not completed clause 23, we can defer it. That may be the best way to go. I will determine whether the committee is happy to proceed with the parliamentary secretary’s amendments. We will not put the question on clause 23 at this stage.

Hon GEORGE CASH: The only issue I would raise is that we will have passed this particular point in the bill. The suggestion is that we deal with the parliamentary secretary’s amendments so that we can make some progress. I agree with that proposal, conditional upon our being able to go back, in due course, to revisit the areas about which there appears to be some confusion.

The DEPUTY CHAIRMAN: That appears to be the will of the chamber. I will still recognise this amendment if we have not completed clause 23 by the end of the day’s sitting. Alternatively, we can postpone clause 23 if we complete all the other amendments.

Hon SUE ELLERY: I move -

Page 9, after line 30 - To insert -

- (3) If a person is charged with an offence under section 22(1) it is a defence to prove that the person was a specialist retailer at the time the offence is alleged to have been committed.

This is one of the amendments I flagged when I indicated that there had been discussions between the Department of Health and industry about changes that industry thought we ought to consider making to the legislation to make it more practical for industry to implement the changes. The amendment seeks to exempt a specialist retailer from being charged with an offence for displaying tobacco products at more than one place in his premises, because that person is in fact exempt from the provisions of the bill that set out that a person can have only one display in any place.

Amendment put and passed.

Hon SUE ELLERY: I move -

Page 10, after line 4 - To insert -

- (b) the tobacco products or packages that could be seen from a public place outside the premises specified in the licence were displayed in such a way that the total surface area of the products or packages was not greater than 1 m² or such lesser area as prescribed at the time for the purposes of section 22(2); and

Page 10, line 5 - To insert before "the" -

the rest of

These amendments are linked to each other. The proposed amendments will allow a specialist retailer, 80 per cent of whose business is tobacco product sales, to have an unlimited display area inside the premises; however, only one square metre of that display can be visible from a public place outside the premises. In other words, a person who looked through the door should be able to see a display of only one square metre.

Hon MURRAY CRIDDLE: The parliamentary secretary mentioned percentages. Can she relate that to the amendments she has moved? Does this apply specifically to people with 80 per cent?

Hon SUE ELLERY: Yes, a specialist retailer as defined by 80 per cent of his turnover.

Amendments put and passed.

Hon RAY HALLIGAN: Clause 23(1) defines a 50 per cent retailer and a specialist retailer. It states -

“50% retailer” means a person who conducts a business selling tobacco products by way of retail sale if -

- (a) the person had been conducting that business on 1 July 2005; -

A specific date -

- (b) at 1 July 2005, 50% or more of the average gross turnover of the business . . .

To find an average, at least two figures are needed. What period will be used to determine the average gross turnover?

Hon SUE ELLERY: I am advised that the words are deliberately flexible to allow for variations. There have been discussions between industry and the department, and industry has sought indications from the department about what information will be required to verify that percentage. The advice given by the department is that, depending on the particular circumstances, it might be taxation returns. It might be possible to provide some flexibility on whether the retailer is at 49.9 per cent or 50.5 per cent. Therefore, those words have deliberately been left flexible. We are talking about putting in place a minimalist regime for the licensing scheme, and that is why those words have been chosen.

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