# NSW Legislative Council Hansard

## REGISTERED CLUBS LEGISLATION AMENDMENT BILL



### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.01 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard.*

**Leave not granted.**

This legislation represents the next phase in the program of improving the governance, accountability and conduct of registered clubs. As we all know, registered clubs in New South Wales enjoy significant concessions in their gaming activities, and these activities generate many millions of dollars of profit for some of our larger clubs. It is important that clubs are accountable not just to their members but also to their staff and the broader community regarding how they manage the large profits they derive from gaming machine and liquor operations.

In August last year the Minister for Gaming and Racing established a new Club Industry Task Force, which is a working partnership between the Government and the club industry. The task force includes representatives of major club industry and club employee associations. Stage one of the task force was completed last year and resulted in a range of enhancements to the corporate governance provisions of the Registered Clubs Act and the Registered Clubs Regulation. Stage two of the task force's deliberations is under way. These involve further consultation with key stakeholders and club industry participants regarding club amalgamations, election of club directors, codes of conduct and industry benchmarking.

More recently, the Minister has established a Special Ministerial Advisory Group to assist and augment the role and duties of the Club Industry Task Force. The advisory group constitutes the chief executive officers of nine significant registered clubs and provides a wide range of detailed advice on policy and management issues by people who have lengthy experience in the long-term management of clubs. While these processes are under way, it is clear that some significant issues remain unresolved in relation to club governance and the role of clubs as employers. As honourable members would be aware, the registered clubs industry is a significant source of employment for the people of New South Wales.

In recent times, threats have been made by club management to sack club employees on fairly spurious grounds. For example, one club made a decision to dismiss a number of staff last November on the basis that the new gaming machine tax might affect the club's future earnings. That new tax came into effect only last month and, further, the first tax under the new arrangements is not due to be paid until 21 December, some 13 months after the decision was made to sack the workers. It defies belief that a club could use the new tax rates as an excuse to sack workers more than a year before the new tax arrangements came into effect. The bill has several components to make clubs more accountable to their members and their work force, and I will give a quick outline of the key elements.

The bill will provide protection for any club employee or director who divulges any legitimate matter of concern to the Department of Gaming and Racing. The proposed amendments will also provide those in the club industry with greater opportunity to make legitimate complaints about registered clubs. The bill will amend the provisions relating to special inquiries into registered clubs to make it clear that such inquiries can make findings in relation to corrupt or improper conduct in certain circumstances. The bill will also standardise the powers of investigation that may lead to different types of complaint action and provide a power for the Director of Liquor and Gaming to be reimbursed for the cost of any such investigation if a complaint is subsequently established. Finally, the bill will amend the legislation to provide for greater disclosure of information to ensure full transparency of club operations.

I will now turn to the details of the bill. The Liquor Act presently nominates employee organisations as one of the parties that can make a formal complaint against a licensee. The Registered Clubs Act does not include a similar provision. It is proposed to address this anomaly and add employee organisations to the list of parties that may take formal complaint action against a registered club. As honourable members would appreciate, club employees are often in a position where they can observe first-hand any improper or corrupt practices that might be taking place at a club. However, despite any concern they might have about the best interests of the club and its members, employees may be quite fearful about reporting improper conduct to the Department of Gaming and Racing for fear of losing their jobs or having other action taken in retribution against them.

The bill will insert certain protections for employees who "blow the whistle" on improper practices at their club. The proposed whistleblower amendments are based on provisions in the Protected Disclosures Act 1994, which provide protection for public officials. The bill will make it an offence for any registered club or person to take detrimental action

against a club employee or director that is largely in reprisal for the employee or director disclosing information to the Director of Liquor and Gaming concerning the conduct of a club.

There are protections provided to the club in return. It is an offence for an employee or director to disclose information to the director that the person knows is false or misleading. Also, the club has a defence to any prosecution for taking action against a whistleblower if it can establish that the disclosure was frivolous or vexatious. The bill also provides that the director may refer employment-related matters arising out of an investigation or a special inquiry to the Industrial Relations Commission or to the department administering the Industrial Relations Act 1996, which is the Department of Commerce.

I turn now to amendments that relate to special inquiries that may be conducted into registered clubs. The Act already enables the Director of Liquor and Gaming to establish an inquiry into corrupt or improper conduct in relation to a registered club. The bill will amend those provisions to make it clear that the person presiding at an inquiry may report a finding of corrupt or improper conduct by a registered club or by any person in relation to a registered club. A finding in relation to corrupt or improper conduct can be made only if the person presiding over the inquiry is a judge or a legal practitioner of at least seven years standing. Another restriction is that a finding of corrupt or improper conduct can be made only if the presiding officer is of the opinion that the conduct concerned may involve a criminal offence or a disciplinary offence.

The bill also provides power for the person presiding at an inquiry to recommend that the director refer matters to a law enforcement agency or other person. As an adjunct to this, the bill provides the director with the power to refer matters arising from an inquiry to a law enforcement agency or other person, including the Industrial Relations Commission and the Department of Commerce. The bill also clarifies that the director may divulge or publish part or all of a report of an inquiry. The director may divulge or publish details of the report only if the Minister is of the opinion that it is in the public interest to do so.

The Director of Liquor and Gaming can currently take complaint action against either a registered club under section 17 of the Registered Clubs Act, or against a secretary or a director under section 35 of the Act. The legislation gives the director specific powers of investigation to determine whether to make a complaint under section 35 against a secretary or director, but there are no similar powers of investigation in relation to whether to take a complaint against the club itself. The bill will provide one generic set of powers of investigation in order for the director to determine whether to take complaint action against a club, or against a secretary or director of a club, or whether there has been any breach of the club governance requirements under part 4A of the Act.

The bill will also provide the director with power to refer the outcome of investigations to a law enforcement agency or any other person who might have an interest in the matter if the director is satisfied that the matter might relate to a breach of the law or may constitute grounds for taking proceedings against a registered club or person. The bill also provides the director with the power to recover the costs of an investigation in limited circumstances.

I turn now to proposals in relation to improving the transparency and accountability of registered clubs. The Act requires a director or top executive of a registered club to declare any gift from any affiliated body of the club that has a value of more than $500. It is proposed to extend this requirement to include remuneration, fees for service and the like, that a club director or top executive receives from an affiliated body: This is intended to require the disclosure of fees that a club director would receive from a football club or other enterprise where there is an interdependent financial relationship.

The bill will also permit the public disclosure of information arising out of or relating to the administration of the Gaming Machines Act 2001 or the Gaming Machine Tax Act 2001 if it is in the public interest to do so. This will allow the publication of individual gaming machine tax and profit figures in the future when it is considered to be in the public interest.

Finally, it is proposed to amend the Gaming Machines Act 2001 to make it clear that the Liquor Administration Board may suspend or cancel a hotel or club authorisation to keep gaming machines if the hotel or club fails to pay its monitoring fee or gaming machine tax. This is a power that the board previously exercised, with some effect, when the gaming machine provisions resided in the Liquor Act and the Registered Clubs Act, when the board was responsible for revenue collection. In transferring this role to the Office of State Revenue, the need to keep the sanction of revoking the right to keep gaming machines was overlooked.

The Government has already made many significant improvements to the accountability and corporate governance of registered clubs. However, it is clear that there remains a great deal to be done. The package of amendments before the House today represents the next step in ensuring that there is a viable and responsible club industry in New South Wales. I commend the bill to the House.

**The Hon. MELINDA PAVEY** [5.16 p.m.]: I lead for the Coalition in debate on the Registered Clubs Amendment Bill. From the outset I express our complete opposition to this bill. If passed, it would constitute a complete denial of natural justice. It is so fundamentally flawed that it is simply an abomination. It is yet another attempt by this Government to attack the club industry in New South Wales. The Treasurer has launched a vendetta against clubs in New South Wales and this bill is confirmation of that. The legislation was amended as recently as late 2003 and it is again before the House. It is clear to the Opposition that the bill is designed to have retrospective effect, particularly in relation to the power of the presiding officer of the section 14X inquiry that is under way into the Penrith Panthers Rugby League Club, and to provide for the presiding officer of the inquiry to make a finding of corruption or improper conduct.

Yet again we are debating legislation that attacks the club industry. Why is the Government intent on persecuting the club movement? Why has it launched this vendetta? The first attack came in the form of the new poker machine tax that

applied from 1 September this year. The bill is no doubt a response to the huge campaign the clubs have waged against the Carr Government's harassment of them. The Opposition has received a great deal of support for the club industry's opposition to the new taxes imposed by the Government. Clubs in Monaro and Port Macquarie have made representations about this unfair tax. The club industry is one of the major employers in both Port Macquarie and Queanbeyan and the tax could have a profound impact on the services and support they offer local community organisations.

Alcohol prices at Port Macquarie's three biggest clubs—Westport Bowling Club, Port Macquarie City Bowling Club and Port Macquarie Panthers Club—have already risen by 5 per cent, and bingo prices have increased and some freebies have been abolished. The workers and retirees who go to those clubs—and I suggest that quite a few of them are traditional Labor supporters—are paying 5 per cent more for their drinks because of the impact of the club tax. At Port Macquarie Panthers Club community donations have been cut by 25 per cent to $300,000, and the club is trying to maintain funding commitments to the 15 sports clubs it supports.

That money, which was going straight into the Port Macquarie community, is now going to the Treasury coffers here in Sydney. We are not seeing that sort of money flow back into our communities, because the Government has got itself into fix after fix and it is striking out at anyone it can to bring in money. Our smaller regional communities are being punished because of the Government's incompetence in managing its books. Charities, schools, sports clubs and others who normally would have expected these clubs to help them are now being knocked back.

Queanbeyan Leagues Club, one of the finest clubs supporting rugby league throughout the Monaro electorate, is now not making the contributions to the sport it used to make because under the new tax regime it simply cannot afford to do so. It is an absolute disgrace that a Labor Government has done this to many of its own people. But what is even more disgraceful is this bill. It is a very serious matter, and members should treat it with the gravity it deserves. The Temby inquiry, which is approximately nine-tenths completed, has heard from many witnesses. Quite suddenly, during the midst of the inquiry, the Government introduced a bill that moves the goalposts considerably to enable the presiding officer in the inquiry to make a finding of corrupt or improper conduct, provision for which is not currently available in the Act and, therefore, was not contained in the initial terms of reference.

The bill will therefore have retrospective effect on an almost completed inquiry, and that is unacceptable and abhorrent. The bill will deny natural justice to the witnesses who have given evidence at the inquiry. Potentially, it could deny natural justice to 11 witnesses. The witnesses gave evidence at the inquiry under the proviso, and in the knowledge, that they were in the hands and guidance of legal counsel. The witnesses also gave their evidence confident in the knowledge that the inquiry was being conducted under the bill's existing parameters and its terms of reference. Those parameters, which might change as a result of the passing of the bill through the upper House, would have a considerable impact and effect on the way in which counsel representing various witnesses would have conducted his or her submissions and responses, and all matters that formed the inquiry.

The motives for this bill are simply disgusting. The fact that the Government is willing to abuse the legislative process in such a way smacks of its arrogance and complete disregard for the democratic processes of this State. It is not acceptable that the Government introduce retrospective legislation to ensure that a presiding officer in an inquiry can make a finding of corrupt or improper conduct. It suggests that the presiding officer has already made up his mind; that the inquiry has reached the conclusions it intends to make.
I wholeheartedly agree with the words of the shadow Minister for Gaming and Racing in the other place that the inquiry can no longer proceed, and that if the Government wishes to pursue matters relating to Panthers Rugby League Club it should commission a new inquiry, with a new presiding officer under the new legislation, and therefore within new terms of reference. Only then can there be seen to be some semblance of fairness in respect of the inquiry. If the inquiry continues in its present form, and the legislation passes through this House, the inquiry will be tainted and natural justice will be denied to the witnesses who have already given evidence.

On behalf of the Opposition I oppose the bill, and I now wish to refer to a number of other matters regarding this appalling legislation. New section 57E obliterates people's right to defend themselves against self-incrimination in the proceedings of a departmental investigation or inquiry. While this protection remains in the Liquor Act, the Government wishes to remove it from the Registered Clubs Act. The reason for the Government deciding to make this distinction is unclear. I can only assume it is yet another dig to discriminate against clubs. In addition, the amendments enable the Treasurer, the Minister or the director-general of the department to publish only information that they deem to be in the public interest despite any other legislation. This sounds as though the Government is trying to improve its openness and accountability—a skill it sorely lacks.

The *Daily Telegraph* had to resort to freedom of information legislation to get some statistics on club poker machine revenues, and the Government stood in its way. However, the situation will also work in the reverse. The bill will empower the Treasurer, the Minister or the director-general to conclude that a piece of information is not in the public interest and therefore they do not have to provide it. New section 57E effectively overrides the Freedom of Information Act, and that is outrageous. The Government will stop at nothing to continue making a mockery of the democratic process that is fundamental to good governance.

This abominable legislation continues to get worse. New section 41ZAA empowers the Minister to publish none, part or all of a new report from an inquiry. In other words, the Minister can have the final say on what information is released. If the Government does not want to publicly publish a damning report, it is not compelled to do so. It sounds very similar to the Government's attempt to hide documents in the Cabinet process, as we heard earlier today. The new section would also affect the inquiry currently under way into the Panthers club. It has become commonplace for the Government to selectively hide from the public, which it is supposed to serve, information that it believes to be detrimental to its political

standing, and yet to make it law. For the Government to seek to significantly reduce its public accountability is offensive.

The Government is so arrogant that it even sent a letter from the Minister to every member of every club—at goodness knows what expense—featuring a glossy brochure outlining the new changes to be brought in by the bill. The Government assumed, arrogantly, that the bill had been passed—even before it had been sent to the upper House. To what lengths will the Government go to bring the legislative process into disrepute? Does it honestly believe that it is not subject to the democratic processes of this State? The "whistleblowing" provisions of the bill are designed to prevent clubs from restructuring and downsizing to accommodate the impact of the increased taxes the Government brought in a couple of months ago. As was discussed in the other place, the Minister is on record as saying:

I can assure you the provisions of section 41X are not intended to impede clubs legitimately restructuring their business operation in good faith.

However, for practical purposes the bill asks employees to be the watchdog. We already have a system in place via departmental inspectors whose job it is to visit and inspect club activities on a regular basis. As I said earlier, clubs in Port Macquarie are already feeling the pinch of the tax increases and have had to modify their business tactics. I presume this is happening right across New South Wales. Clubs are trying to prevent job losses at all costs, but it is predicted that job losses will be significant. The Allen Consulting Group has estimated that some 24,000 direct jobs will be lost as a result of the tax increases, which have made it impossible for the majority of clubs to maintain their level of community support through low prices and services. The legislation has the potential to drag into new inquiries clubs that attempt to restructure in order to survive.

The amendments that were released late in the piece provide that under section 57G a direct financial penalty will be imposed on clubs. The amendments will have the secondary impact of providing an alternative source of budgetary support for the department's operations. Clubs will have to bear the cost of these Government-inspired inquiries if subsequently the Licensing Court orders costs against a club. While I note that this will not have a retrospective impact on the Panthers inquiry, it is yet another setback for the club industry. It shows the level to which the Government has stooped in its plans to discriminate against and hurt clubs at whim.

Since the bill was introduced to Parliament in September, Panthers initiated an action in the Supreme Court to challenge the jurisdiction of the inquiry regarding section 41X of the Registered Clubs Amendment Act, and to make retrospective certain findings of corruption and/or improper conduct that otherwise could not be made under the Act or the inquiry's terms of reference, which adhere to the Act. The action was initiated following the revelation of impending draft findings that the head of the inquiry tabled to the inquiry, which became the basis for the Supreme Court action. The Supreme Court action has now concluded, and the judgment prohibits and prevents the inquiry from making such findings.

The judgment is in accordance with both the Act and the inquiry's terms of reference, and bars the inquiry from extending beyond its terms of reference. This will have a significant impact on the bill because not only will it be a retrospective matter but it will also overturn a finding of the Supreme Court based on High Court precedents. It would be a charade if this legislation allowed the inquiry to make retrospective findings that are not provided for in the current legislation, which the Supreme Court, relying on High Court precedents, has reaffirmed is not available to the inquiry. To overturn a decision of the Supreme Court is a consideration to be taken extremely seriously and carefully by members of this House. I would expect such a decision to be made only in the direst of emergencies, and I remind members that this is in addition to the denial of natural justice to those witnesses who have already given evidence at that inquiry.

I reiterate the questions posed to the Minister by the honourable member for Upper Hunter, George Souris, which have not yet been answered but which are crucial to an understanding of the motives behind the bill. What roles have been played by Mr Temby, the inquiry's lawyers, officials from the Department of Gaming and Racing, and anyone relevant to the Government or to the inquiry? Have they made representations or sought to incorporate certain features in a bill that would change the terms of reference in such a dramatic way? If so, it is improper. Has the inquiry sought to influence the Government to change its own terms of reference in order to make a predetermined finding?

The shadow Minister for Gaming and Racing has consulted widely within the industry and found everyone completely gobsmacked at the intent of this bill and the dangerous precedent it sets. Clubs NSW and its legal counsel, the Leagues Club Association and the Services Clubs Association are appalled that this legislation is even before the Parliament. The bill is simply about getting back at the clubs for standing up to the Carr Government and marching against its tax regime. We saw those people—10,000 or so of them—marching out in Macquarie Street against what this Government is doing to its industry. This Government's total thuggery proves to what lengths it will go to curb any disobedience.

The bill is designed to intimidate the clubs industry and attempt to pull them back into line. Almost every Coalition member in the other place spoke on this bill and addressed the dire consequences of the legislation. I expect the same to occur in this Chamber, as we cannot stress enough the madness of this bill. It is so fundamentally flawed that it cannot be supported. On Tuesday, when the shadow Minister in the other place took the unusual step of responding to the bill during the third reading, the Minister for Gaming and Racing, Grant McBride, made this momentous contribution in responding to the serious allegations and the serious concerns:

I move:

That this bill be now read a third time.

That was it. He did not respond to any of the concerns raised by the industry or by the shadow Minister, George Souris. He was not able to make any meaningful contribution. I echo the words of the shadow Minister that it is outrageous that

this Government would entertain such an overture and introduce retrospective legislation that involves the denial of natural justice by overturning a judgment of the Supreme Court and a High Court precedent that was used in determining a Supreme Court case.

Any Minister who supports this type of legislation abrogates his legislative morality and his credentials as a member of Parliament. Obviously, the Minister's higher duty has no relevance or interest to him. He simply wants to have this legislation passed by the Parliament so that the inquiry can do its dirty work. The Opposition will oppose this bill.

**Debate adjourned on motion by the Hon. Melinda Pavey.**

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