



## Legislative Council Hansard (Extract)

### Gaming Machines Amendment (Transfer of Poker Machine Entitlements) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 23 November 2006.

#### Second Reading

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [2.53 p.m.]: I move:

That this bill be now read a second time.

When the Gaming Machine Entitlements Bill was amended, my staff pointed out to me that it was not clear who owned the poker machine entitlements—whether they were owned by the licensee or by the hotelier. When poker machines were first bought they were regarded simply as a piece of machinery, in the same way as a refrigerator might be regarded. However, when poker machine entitlements were added, the licences of hotels and pubs became very valuable, so something had to be done. It was not clear who owned those entitlements, which could be sold, thus rendering worthless some country pubs. Since the introduction of gaming machines into pubs more than half the value of those pubs is to be found in gaming machines. Gaming machines now generate more income for a pub than would be generated by the selling of beer.

People expressed concern about poker machine entitlements in country pubs being sold off to the city, thus effectively rendering pubs and, in some cases, towns unviable. I said earlier that staff in my office observed this anomaly and, during debate on the second reading of the Gaming Machine Entitlements Bill, I asked the Minister to address that issue. However, I do not believe he fully understood what was meant and, when replying to debate on that legislation, he did not make it clear. The matter was then litigated in court—I do not believe the court knew what it was doing—and the court came down in favour of licensees. The Australian Hotels Association [AHA]—its membership comprises about 80 per cent licensees and about 20 per cent hotel owners—effectively lobbied for the licensee. So where a licensee had no interest in the poker machines, which had been set up by the hotelier, that licensee could still take the poker machine entitlements, sell them at a huge profit and skip off to the Gold Coast, leaving a non-viable hotel with poker machines that it was not allowed to use.

People who had invested all their money in a country pub for their retirement or to supplement their income effectively could have been left broke by someone who skipped town. We must address that anomaly and each case must be dealt with on its merits. I referred anecdotally to a case of which I am aware, but each case might be different. Who is morally or legally entitled to poker machine licences? Cases such as this would have to be litigated at vast cost in order to obtain different precedents. I am sure all honourable members would be aware that that would be difficult, given that precedent always governs the law.

Section 19 of the Gaming Machines Act 2001 provides for the transfer of poker machine entitlements allocated in respect of an hotelier's licence or the premises of a registered club. An application to transfer a poker machine entitlement allocated in respect of an hotelier's licence must, among other things, demonstrate to the satisfaction of the Liquor Administration Board that the proposed transfer is supported by each person who, in the opinion of the board, has a financial interest in the hotelier's licence. Currently, a person is taken to have a financial interest in a hotelier's licence if the person is entitled to receive any income derived from the business carried on under the authority of the licence, or any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

The object of the Gaming Machines Amendment (Transfer of Poker Machine Entitlements) Bill is to provide that a person is also taken to have a financial interest in the hotelier's licence if the person is the owner of a hotel for which there is a lease or other arrangement, the terms of which expressly provide for an application to be made to transfer the licence to the owner or the owner's nominee. The Gaming Machines Act 2001 permitted hotels to sell poker machine entitlements—a lottery win for the publican. Poker machines have poured out of country areas—964 from September 2000 to September 2005—and that figure is accelerating. Forty-seven hotels have sold off all their poker machines from January 2004 to April 2006.

This sale of poker machine entitlements has been accelerated by an ownership battle between owners and tenants. Today tenants are selling poker machine entitlements. The legal system has failed to protect the owner. Former Minister Richard Face intended that poker machine entitlements would be allocated in respect of the hotelier's licence and mirror the property rights involved in the licence. The hotelier's licence, in the majority of leases, remains the property of the hotel owner. Following the New South Wales Supreme Court decision in *Benwine Pty Ltd v Jabatin Pty Ltd* a hotel tenant is now able to sell poker machine licences without the consent of the landlord.

I sought clarification of the ownership of poker machine entitlements in a question to the Government during

debate on the second reading of the Gaming Machines Amendment Bill but the Minister did not address my concerns. The issues about which I was concerned have become a reality. The minor amendments proposed by this bill to the 2001 gaming machines legislation would reflect the correct intention of the Act—an issue that was subsequently confirmed by Mr Richard Face, the Minister who introduced the legislation. Action is required now. The bill also sets as the date for its commencement the date it passes Parliament. Effectively, this will stop any rush to deal with entitlements. The Government has dithered with and failed to address this important issue. Yesterday it finally made a decision to do nothing, which is quite unacceptable. I commend Greg Evans, Nick Tinning, and Ron and Drew Roberts for pushing this issue and for explaining to me why the legislation needed to be changed. I commend the bill to the House.