

SECURITY INDUSTRY AMENDMENT (PATRON PROTECTION) BILL 2007

Bill introduced, and read a first time and ordered to be printed on motion by Reverend the Hon. Dr Gordon Moyes.

Second Reading

Reverend the Hon. Dr GORDON MOYES [4.44 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Security Industry Amendment (Patron Protection) Bill today, the object of which is to make amendments to the Security Industry Act 1997 to introduce new measures covering the security industry, including targeted drug and alcohol testing of bouncers and crowd controllers. These measures will affect only those who have a 1C or a PIC licence that authorises the licensee to act as a crowd controller, venue controller or bouncer or to act in a similar capacity. Other people who are licensed by the Security Industry Registry are not subject to drug or alcohol testing under this bill.

The intention of this bill is to enhance the safety and security of patrons in hotels and nightclubs across the State. By way of background, the bill sets out to achieve a number of policy objectives: to ensure that crowd controllers are not under the influence of drugs or alcohol while working because of the lack of judgment and increased levels of aggression associated with many of these substances; to reduce the prevalence of drug trading in nightclubs and hotels; to facilitate increased reporting to police and the Security Industry Registry of assaults committed by crowd controllers; to dramatically increase the accountability of crowd controllers while on duty with regard to violent and other criminal conduct; to ensure that crowd controllers are part of the solution to violence in licensed premises as opposed to being part of the problem in a significant percentage of incidents; and to ensure that master licence holders act in accordance with the principles of fair trading. Before I lay the foundations of the rationale for this bill I point out that it has been developed in close consultation with all of the peak bodies that represent the security industry.

Consultation has taken place with the Australian Security Industry Association, the Institute of Security Executives and the Building Services Contractors Association of Australia. I have also received a joint submission from those organisations and had discussions with the Australian Hotels Association. Those organisations have had a copy of this bill and the explanatory notes for many months prior to today's sitting in order that they might fully analyse the content and its ramifications. Industry representatives have indicated that they were suitably impressed with the degree of consultation that took place with them in relation to this bill. I can safely say that no other bill concerning the security industry in New South Wales has been the subject of more consultation with the industry since the inception of the Security Industry Act 1997.

I also point to out that two other Australian States—South Australia and Western Australia—have similar testing programs to that which is proposed in this bill. The Premiers of those States have made testing regimes the centrepiece of reform with regard to their zero-tolerance approach to crowd controller misconduct. We have all heard stories about the treatment of some patrons by bouncers. In fact, one need only look at the sports pages of almost any day's newspapers to read about various sportspersons who get involved in brawls and drunken boxing matches after hotel closing hours and in the early hours of the morning.

In my travels around this State this issue, along with other varieties of after-dark violence and antisocial behaviour, is a common theme among constituents. I submit that the incidence of violence in pubs and hotels is certainly not peculiar to centres such as Sydney, Newcastle and Wollongong—or are inebriated patrons solely to blame for its prevalence? Honourable

members will remember the highly publicised death of the Australian cricketer David Hookes early in 2004. Unfortunately, a series of similar bouncer-patron deaths has occurred since then. That incident is a constant reminder of how the patron-bouncer relationship can go awfully awry.

The reality is that if the Parliament of New South Wales were to pass this bill, the risk of similar incidents occurring would be dramatically reduced. Studies on violence in New South Wales indicate that a significant percentage of criminal assaults tend to cluster in and around licensed premises. There is not a day's newspaper that does not recount at least one story. About 90 per cent of assaults that occur late at night—the most common time for assaults generally—are those associated with alcohol abuse. With regard to the establishments, the majority of violent incidents were concentrated in a small number of larger hotels and nightclubs, most of which were trading at later hours.

A prominent feature in all these larger pubs and clubs is the teams of crowd controllers that emit people from outside and move among the crowd indoors. Police are rarely—or never—seen in such venues; they leave it all to the crowd controllers. Sometimes the crowds are in excess of a few thousand patrons. Further, statistics produced by the New South Wales Bureau of Crime Statistics and Research show that general violent assaults in licensed premises are on the increase. Assaults in New South Wales hotels and clubs have consistently grown, from 3,041 incidents in 2000 to 3,972 assaults in 2004. In registered clubs the number of incidents has also increased, from 1,000 to 1,400 over the same period. Assaults in nightclubs have increased from 537 to 713. It can be seen that there is a 25 per cent, 33 per cent or 50 per cent increase in these various categories in a matter of just four or five years. In each of these cases, it is a remarkable increase in aggression in licensed premises.

Throughout all licensed premises in New South Wales there has been a 29 per cent increase in assaults since the period from 2000 to 2004. The House should note that all the research in this regard shows that the existence of late trading hours is the greatest antecedent to violence in and around licensed premises, which spikes in the hours following midnight. Members would be aware that many councils have banned, or have sought to ban, late opening hours in their municipalities. As one might be able to appreciate, the extent of bouncer-instigated aggression towards patrons is very difficult to measure. It requires teams of researchers sitting in licensed premises until the early hours of the morning, waiting for incidents to occur. However, these studies have been done by university-based research teams to confirm the assertion that there is a significant problem with some crowd controllers who engage in violent conduct against patrons.

Moreover, policing agencies and crime researchers are increasingly becoming aware of the role that crowd controllers play in inciting incidences of violence conducted in hotels and nightclubs. In a 1998 article in the *Journal of Drug Issues* that was authored by Wells and others entitled "Responses to security staff to violent incidents in public settings", 182 violent incidences in bar settings in Toronto, Canada, involving crowd controllers were examined. The researchers found that in 12 per cent of the incidences the crowd controllers' responses were related as "good", 20 per cent of the responses were related as "neutral", but 36 per cent of the responses were related as "bad". That is, the crowd controllers enhanced the likelihood of violence but were themselves not violent. In 31 per cent, or almost one-third, of the incidences the crowd controllers' responses were related as "ugly". The crowd controllers' action involved gratuitous aggression, harassment of patrons, and provocative behaviour. Likewise, studies in Australia, most of which are fairly dated now, have indicated that between 21 per cent and 47 per cent of all violent incidences in licensed premises involve violence by or against security staff. A Queensland study undertaken in 1999 assessed whether providers of security personnel believe that regulation had reduced the number of

assaults by crowd controllers in licensed premises. The State Security Providers Act, a regulation that does not provide for drug and alcohol testing, was judged by 37 per cent of the security companies to have reduced crowd controller assaults, 30 per cent were unsure whether they had been reduced, and 32 per cent of security companies disagreed that assaults were decreasing. This level of violence in licensed premises is notable, especially given the possible bias that security companies may have in minimising the public perception of violent crowd controllers.

Given this range of figures, one can say that the evidence suggests that a significant minority of violent incidents that occur in hotels and nightclubs are initiated by aggression or provocative behaviour on the part of crowd controllers towards patrons. Importantly, these figures do not include any incidents initiated by crowd controllers that were not reported by patrons to the police. According to the Australasian Centre of Policing Research in a 2004 research paper entitled "The antecedents of alcohol-related violence in and around licensed premises", the reasons for underreporting are as follows: the perceived low conviction rates of crowd controllers involved in the assaults; difficulties associated with the identification of the assailant; difficulties with the victim obtaining corroborating evidence; the perceived risk of physical intimidation by the crowd controllers in the future; a perception that reporting crowd controllers to the police would lead to the victims being banned from licensed premises; and police decisions concerning whether to proceed with assault charges being influenced by the recognition that police also have to deal with some of the same abuse and behaviour that crowd controllers have to deal with.

There is a code of silence, or perhaps collusion, that is intrinsic in the culture of crowd controllers that render police investigations problematic, and delays between the alleged assaults and the interviewing of crowd controllers by police facilitate collusion between crowd controllers. Members should note that the total number of licensed security officers and crowd controllers in New South Wales, including those that are armed with weapons, is 43,838. This number compares with only 14,200 police officers. Licensed security officers play a role in maintaining safety and security not only in private spaces but frequently also in public spaces. The number of private security guards is increasing rapidly. I ask members to imagine the situation now: within the State there are around 50,000 private security controllers, many of whom are armed, compared with fewer than 15,000 police officers. When the Australian States began regulating the burgeoning security forces in the 1990s it was acknowledged that this private police force of 43,800 people must be regulated to maintain the integrity of the industry. Legislators understood the propensity of risk to the industry for being infiltrated by criminality and the abuse of power. This is perhaps one of the main reasons why the bill needs to become New South Wales law. Crowd controllers on private property act with the additional delegated power of the landowner or the publican. In 1999 Professor Rick Starr of the University of South Australia and Associate Professor Tim Prenzler from Griffith University noted that in private venues such as nightclubs and hotels crowd controllers operate with more real authority than police officers. If police officers are publicly held accountable for their conduct while on the job, a similar argument can be made in relation to crowd controllers.

As I have said previously, the centrepiece of this bill is the introduction of drug and alcohol testing of crowd controllers who work in hotels and nightclubs. My office—and I acknowledge especially the work of my former staffer Jonathon Flegg—contacted all the leading experts in criminology and the security industry to ask for their opinions on this bill. Members may care to note that these leading experts strongly supported the bill. Indeed, as a result of the bill Australian experts in their respective areas are calling upon members of the New South Wales Parliament to introduce drug and alcohol testing of licensed crowd controllers. I seek to table a letter signed by a series of professors from seven universities.

Leave granted.
Document tabled.

The document I have tabled is a letter of support for this bill from seven professors in seven universities who have specialised in the study of the behaviour of crowd controllers within licensed premises. I thank those experts for their work and research in support of the bill. We must not reject the reports of those professors. I thank each of them for their efforts, especially Professor Tim Princely for his assistance in producing the statement.

The list of workers in New South Wales subject to drug and alcohol testing is growing. For example, police officers are tested regularly. Military personnel, pilots, train drivers, ferry pilots, bus drivers, transport and maintenance workers, and safety workers are all subject to some kind of testing. So too are all motor vehicle drivers, who may be subjected to random breath testing for alcohol and, more recently, drug abuse. It is only sensible that those who are in control of the safety of large numbers of the public—patrons and members of the public in general—should also be subject to such random testing.

Debate resumed from 7 June 2007.

Reverend the Hon. Dr GORDON MOYES [11.46 a.m.]: The Security Industry Amendment (Patron Protection) Bill has been developed in close consultation with the peak body that represents the security industry. Consultation has occurred with the Australian Security Industry Association, the Institute of Security Executives and the Building Services Contractors Association of Australia. Those organisations also made a joint submission with the Australian Hotels Association. We have all heard stories about the treatment of some patrons by bouncers. In my travels around the State this issue, together with various acts of after-dark violence and other antisocial behaviour, is a common theme with constituents. I submit that the incidence of violence in pubs and hotels is a problem that is certainly not confined to Sydney, Newcastle and Wollongong. Neither are inebriated patrons solely to blame for its prevalence.

Honourable members will inevitably remember the highly publicised death of Australian cricketer David Hookes in early 2004. That incident is a constant reminder of how the patron-bouncer relationship can go awfully awry. When I last spoke to the bill I pointed out that a growing list of workers in New South Wales are subject to drug and alcohol testing, which is the point of this bill. For example, police officers are tested regularly. Military personnel; pilots; train, ferry and bus drivers; transport and maintenance workers, and safety workers, are also subject to some kind of testing. So, too, are vehicle drivers, who may undergo random breath testing for alcohol and drug abuse. Therefore, it is only sensible that those in control of the safety of large numbers of patrons and members of the public should also be subject to random testing.

The common and growing consensus is that individuals who have a personal responsibility for public safety and who could be a significant risk to public safety when under the influence of drugs or alcohol should be subject to some kind of testing for drugs and/or alcohol abuse. This is the case with crowd controllers in licensed venues. We should all understand that the environment in which bouncers work is inevitably very stressful. In 1990 the Victorian Community Council Against Violence published a definitive report on the subject entitled "Violence in and around Licensed Premises". It described the job as:

Not well-paid bouncers work long, late hours in dark, smoky, noisy places dealing with intoxicated and aggressive patrons. The job itself has been described as inherently inflammatory in its nature.

A 2005 study undertaken by Dr Stephen Tomsen into drinking practices and alcohol-fuelled violence in the Newcastle and Hunter regions confirmed that the culture of aggression between 18- to 25-year-old males and bouncers still exists in New South Wales licensed premises. Most young men interviewed had experienced some form of excessive force at the hands of bouncers and a few were openly hostile towards bouncers, viewing them as bullies who victimised smaller or intoxicated opponents. In such a potentially hostile environment it is paramount that crowd controllers carry out their duties in a level-headed manner and are not influenced in any way by drugs or alcohol. Unfortunately some people who have been assaulted by such persons, who were perhaps under the influence of drugs or alcohol, have paid the ultimate price of death. Suffice it to say, the very presence of any drugs and/or alcohol in a person's system can make that person more vulnerable to incitement or provocation. We need only read the daily papers to know that a number of sporting stars become involved in such behaviour. This bill assists in creating a safer and violence-free environment for patrons and for the public at large.

As I mentioned at the start of my speech, two Australian States are at the forefront of regulation for the security industry and already have testing regimes in place. Drug testing in Western Australia commenced in 2000 and, to date, 896 drug tests have been completed on crowd controllers. Under the Western Australia regime, crowd controllers are served with notices that require them to attend a designated place on a particular date to give a sample of blood or urine to be tested. Of the 896 licensed crowd controllers tested, 116 failed and had their licences revoked. A further 31 failed to attend the location designated for the drug test. It was assumed that they knew they would fail, so they also had their licences revoked. Some 749 passed the test and 14 cases are still pending. These figures were provided by the Special Projects division of the Western Australia Police Service, which also reported that in the first few months of the testing regime about one-quarter of all tests returned were positive.

Even after the introduction of targeted, intelligence-driven testing of crowd controllers, positive tests now total 13 per cent. By introducing new "Instacheck" drug detection kits, the basic test in Western Australia will soon be reduced in cost to only \$22 a test. This is perhaps one of the greatest successes of the zero-tolerance policy to crowd controller violence that the Western Australian Government has adopted. It reveals that the Western Australian Police Force is at the forefront of industry regulation. In May 2005 the Statutes Amendment (Liquor, Gambling and Security Industries) Act came into force in South Australia. In addition to drug and alcohol testing of crowd controllers, South Australia also introduced mandatory psychological assessments of licensees and refresher training courses. It is currently too early to gauge the success of the South Australian measures. Queensland's Department of Fair Trading is currently performing a review of its Security Providers Act 1993 with a possible view to introducing a regime of drug and alcohol testing of crowd controllers similar to that introduced in my bill.

We all know about the recent increase in the popularity of dangerous party drugs such as ice and ecstasy. Nightclubs are the hub of the trade in amphetamines. Nightclub patrons often take a pill to heighten their sensitivity and the pleasure of a night out. Most importantly, a 2002 publication by Britain's Home Office and the London Drugs Policy Forum entitled "Safer Clubbing" acknowledged that the single most important factor in tackling the drug trade in nightclubs is door supervisors, or bouncers. Some bouncers exercise control over the

lucrative trade because they get to decide which dealers in those drugs enter the club and which are ejected. They may even deal directly in drugs themselves.

A program of targeting testing for drug use by bouncers in venues where police have identified high levels of drug trading is an effective tool in minimising the party drug trade. A nightclub dealer in amphetamines is almost always going to be a user of amphetamines and thus can be tested. This method is less invasive than the recent sniffer dog raids in New South Wales, which caused the associated problem of users simply throwing their drugs onto the crowded nightclub floor in order to escape prosecution. The introduction of targeted drug testing will help to ensure that the right kinds of people fill positions of authority in nightclubs and can assist police in keeping the venues free of drug traders.

Having outlined the policy behind the formulation of the bill, I will now consider briefly each of the specific provisions of the proposed legislation. The first amendment proposed to section 15 of the Security Industry Act requires applications for licences to include a written statement by a medical practitioner certifying that the applicant is physically and psychologically fit to carry on security activities of the kind authorised by the licence. When ascertaining whether the applicant for a licence is fit and proper to hold a relevant licence, the Security Industry Registry is able to use other relevant criminal intelligence regarding the applicant. Currently when ascertaining whether an applicant for a licence is "fit and proper" to hold a relevant licence, the Security Industry Registry is able to use other relevant criminal intelligence regarding the applicant. Under the second proposed amendment to section 15 of the Act, the registry will also be able to collect relevant information about the applicant from the Office of Fair Trading. It is intended that this will be used when renewing applications from master licence holders.

Amendments to section 26 specify that a holder of a licence that authorises work as a crowd controller or bouncer can have the licence revoked for failing a drug or alcohol test administered by a police officer. Proposed division 3A of part 2 of the Security Industry Act details the procedure for administering a valid drug or alcohol test on a licensed crowd controller or bouncer. A police officer may ask a 1C or P1C licensed security officer to undergo a breath test for the presence of alcohol or to supply a sample of urine or hair to test for the presence of prohibited drugs. Following a licensee undergoing a breath test, the licensee is issued by the officer with a notice of their recorded blood alcohol level along with the time and date of the test.

Amendments to sections 22 and 36 of the Act are designed to increase identification of licences. Crowd controllers often wear their licences around their neck and tucked into jumpers or under coats in such a way that it makes them difficult to read. The bill will require in the case of 1C or P1C class licences that licensees wear their licences in a clear plastic sleeve or badge which is fixed or fitted to their clothing and is not on a chain or ribbon worn around their neck.

The bill acknowledges that, at least in part, some crowd controllers are contributing to violence and drug trading in licensed premises. I emphasise that this should in no way be construed as a reflection upon the professional and drug-free and alcohol-free crowd controllers who take their job and the law seriously. However, the bill does address a problem that has clearly arisen within the industry that is significant enough to warrant serious action. In my firm opinion the bill will mitigate the level and extent of the problem within New South Wales.

Lastly, may I add that a significant by-product of the bill, if it is passed, will be to assist the

industry to achieve a better image in the mind of the public. I am pleased that all associations and peak bodies covering such industries support the measures that I have moved in this House. I urge all honourable members to support this very important and much-needed bill. I thank my staff member Linda Munoz and former staffer Jonathon Flegg for their work in helping me prepare this legislation, and in particular for gaining information from each of the other States of Australia that have implemented similar legislation.