

ROAD SAFETY COMMITTEE

Inquiry into Pedestrian Safety

Melbourne — 29 May 2006

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Ms Sue Maclellan, Director of Liquor Licensing

The CHAIR—I declare the meeting open at 2 p.m. Welcome, everybody here today. I of course provide a special welcome - a special warm Road Safety welcome - to Sue Maclellan, who is the Director of Liquor Licensing, Consumer Affairs Victoria.

Ms MACLELLAN—Thank you.

The CHAIR—Thanks to you, Sue, again for coming along. As you are aware, or you may be aware, this committee in 1999 completed a pedestrian safety report to parliament. Earlier this year, or late last year, we decided as a committee to just re-examine the pedestrian safety report on the basis of what the government has accepted to do, what it has rejected and what it has actually introduced, and that is what we are doing at present. Marilyn is our main research officer doing that work. Of course, with pedestrian safety, liquor licensing and intoxicated pedestrians are becoming an issue for us, so we thought it was a good idea to have you along today. Again, we thank you for your input. I am not sure whether you have any opening remarks or whether you just want us to kick off and ask some questions that we may have garnered along our journey.

Ms MACLELLAN—I have read the initial report and the government's response. The former commission, for whatever reason, did not respond to the committee or have any input, so I cannot comment on that. So it is probably more appropriate that you ask me some questions, or I can steer you to some information that may assist. That might be the best way.

The CHAIR—Yes, fine. What I also should point out is that we are obviously operating under transcript and parliamentary privilege, so what you say today cannot be used against you in the future. We will provide you with a copy of the transcript. I can kick off, if you like. One of the issues that have obviously struck us in the last 12 months as a members - and I have noted it in my own electorate - is that we have had young people especially leaving pubs and walking home intoxicated and, of course, becoming road statistics themselves. What is the duty of care for hoteliers or liquor licensees with regard to the responsible serving of alcohol to their patrons?

Ms MACLELLAN—The duty of care is that they must not serve somebody who is intoxicated and they must require somebody who is drunk to leave the premises. So their duty of care is to comply with the Act in those two regards. Their duty of care in a moral sense, if somebody is drunk, is to ensure that they are leaving appropriately, be they with friends, in a taxi or by some supervised means. That is not in a legal sense; that is an obligation they have. But, in terms of drunkenness, they must exit the premises, and, in terms of intoxication, they should not be served any more alcohol.

Dr HARKNESS—So there is an onus upon the hotelier or the licensee to ensure that they have some mode of transportation, that they are able to walk away safely?

Ms MACLELLAN—That is a moral obligation, and what they are expected to do to ensure that they leave safely and that they are safe and do not go and—

Dr HARKNESS—Walk under the first car.

Ms MACLELLAN—Walk under the first car. However, the case that occurred in Queensland which you referred to in your first report, which was *Cole v Tweed Heads*, has finally been settled by the High Court, and that put the onus of proof back onto the person who was drunk, the patron, not onto the club. In that case the full bench of the High Court ruled that the patron had obligations and requirements, so the duty of care to the licensee was diminished in that case. I think at the time of the initial committee response that was going through its first appeal. It has been through about four appeals since, until it was settled last year. I have a copy of the transcript of that, if that would assist the committee, to see some of the issues raised by the Full Court in terms of duty of care.

Dr HARKNESS—Just in terms of duty of care, is there an obligation or an onus to provide access to food or free water?

Ms MACLELLAN—Neither. I do not regulate water, and in certain circumstances it is not required to be on licensed premises. The government has issued guidelines on the supply of water in licensed premises through the Health minister, and that is related to health issues. It is related to illicit drug-taking in licensed premises and the need to provide water. In most licensed premises, such as restaurants, the provision of water is not an issue. It would be provided on the table without it being requested. The issue is paying for water rather than the supply of it.

The CHAIR—So it is more in the nightclubs that it becomes an issue, when young patrons have to buy the water?

Ms MACLELLAN—That was the issue. That is why the government issued guidelines on the provision of free water, but it is a fine line balance concerning what the water is being used for: is it in lieu of alcohol or is to assist in drug-taking? That is a challenge for all of us to deal with. If it was in lieu of alcohol, it would be straightforward, but it may not necessarily be in a nightclub environment. But there were issues where water was not being provided and licensees were turning off taps and only providing hot water, and that is why the guidelines were issued.

The CHAIR—When were those guidelines issued?

Ms MACLELLAN—2004, I would say.

Mr STONEY—Have you got a position on alcohol-testing devices in licensed premises?

Ms MACLELLAN—I do not have a position on it, because intoxication is not linked to blood alcohol content, neither is drunkenness. But if a licensee wishes to put a machine in, they can do so.

Mr STONEY—Can you explain that a bit further? How do you mean, it is not linked?

Ms MACLELLAN—Intoxication is a state that a person gets to, and all the indications are that it can vary between people: their physiology, their state at the time - whether they are tired, fit - a whole variety of factors. The BAC at which somebody is intoxicated will vary considerably between people. So the definition of 'intoxication' that has been put in the Liquor Act and definitions used around the world do not relate to BAC at all.

Mr STONEY—But the decision whether someone would walk home or drive home is very much related to the machine, so is there a position about making it easier for patrons to test themselves before they decide, like a basic signal—

Ms MACLELLAN—There is nothing stopping a licensee putting a machine in should they choose to.

Mr STONEY—But you do not have a favoured position whether they do or not?

Ms MACLELLAN—No, I do not. It would need to be tested against the accuracy of the machines and all the issues surrounding a machine not being accurate - somebody relying on the reading from a machine that they did not apply themselves to properly, or from an inaccurate machine, and then consequently choosing to drive or walk in some manner - and then other issues later on.

Mr BISHOP—I understand that one of the suppliers for that machine is working with the TAC, and they are installing 70 machines in a cooperative effort in relation to that. Is your organisation going to monitor those or do you have any interest in that at all?

Ms MACLELLAN—No. TAC has a relationship with country racing. They have also installed them at country race meetings, for the large cups - the first time I saw them was at Mornington - where people can test themselves. I have no objection to them, but I am not responsible for monitoring them or requiring that they be there. But there are some cautions with using them if they are not appropriate machines of a sufficient standard when compared with those that would be used elsewhere, rather than a cheaper version of them which could give a misleading reading or, if not used properly, again could be misleading. So there are elements of supervision and elements of precision that need to be considered with those machines.

Mr BISHOP—Have you had any feedback through your hoteliers, club owners and other people involved in the trade in relation to those particular instruments?

Ms MACLELLAN—The only correspondence or discussions I have had has been with people who wish me to put machines into the licensed premises. I have not even had any discussions with TAC.

Mr BISHOP—Would it be a good idea if you did?

Ms MACLELLAN—It could be, yes. I am happy to. They obviously made the choice to do that without discussing it with me. That is fine, but I am happy to talk to them.

Mr STONEY—Is there any thought that Responsible Serving of Alcohol should be a compulsory program for everyone who is at serving at a bar?

Ms MACLELLAN—Under the Act certain people are required to do RSA training. Others are not required to do it. All packaged liquor licensees, managers and employees have to do RSA training under the new code for packaged liquor licensing, so it extends to all staff. All staff employed at premises that operate after 1 a.m., be they crowd controllers or serving behind the bar, are obliged to do it. That is a condition of the liquor licence, and I can place it on any other licence should I see fit. The take-up in Victoria of doing RSA is some 40,000 per year, including people doing refresher courses. The government has not seen a need at this time to regulate it any further, albeit I could do it through licence conditions, to ensure that everybody does it. However, I am aware that there are different views from different organisations about whether that should or should not occur.

Mr STONEY—Which staff do not have to have that programmed training?

Ms MACLELLAN—In a normal situation there is not an obligation on any staff in, for example, a restaurant to do it. However, the owner or the manager would have done it, and in any other circumstances except where it is obligated, there is no onus on people to do it.

Mr STONEY—But you did run through a list of people that were supposed to hold it, including managers. Is it the manager of the bar as well, and those after working after 1 o'clock?

Ms MACLELLAN—Yes, in certain circumstances, if they trade after 1 o'clock.

The CHAIR—So after 1 o'clock it is pretty much all the staff within the—

Ms MACLELLAN—Yes, including the crowd controllers. All crowd controllers are now obliged to do RSA training in Victoria. There are three ways of achieving it. One is by regulating it, and that is what happened with the packaged liquor licences; another is a condition on a licence, which is my obligation; and the other is the voluntary obtaining of a certificate.

Dr HARKNESS—What about restaurateurs with only a BYO licence, where people bring their own wine and they bring half a dozen bottles for a small group? Is there an onus upon the restaurateur to stop opening bottles that people bring themselves?

Ms MACLELLAN—Yes. If somebody is intoxicated and/or drunk, they should not be served.

Mr BISHOP—Sue, I am interested in the judgment of intoxication and blood alcohol content. I find that interesting, and one of the reasons I do is that during the processes of these proceedings it seems that the responsibility is on the driver all the time in relation to pedestrians. Do you have a view on compulsory testing of blood alcohol content for pedestrians who are involved in accidents and might go to hospital?

Ms MACLELLAN—I do not have a view, but with Victoria Police we have been running some programs. There was a program - I have forgotten what the police title for it was - where everybody who presented at a hospital emergency department who had been drinking was tested, particularly those who had been involved in fights or other antisocial behaviour and presented at hospital. There are three hospitals pilot testing to see if we can link it back to licensed premises. Equally, the police now have a new program called Project Adrift which deals with drink drivers presenting at hospitals, but that has not, as I understand it, extended to pedestrians. I would imagine that if a pedestrian was hit and was caught and presented at one of the three hospitals in the first pilot program, yes, they would be tested and it would be linked back to licensed premises.

Mr BISHOP—I thought, and I may be wrong, that during one other part of the hearing someone said there was no definition of 'intoxication', but you are saying that there is?

Ms MACLELLAN—There is now a definition for liquor licensing purposes, yes. It was put in the act following the recent amendments that the parliament passed - in April this year - in the Liquor Control Reform (Amendment) Act. That inserted a definition of 'intoxication' into the Act.

Mr BISHOP—Could you run us through this: Graeme and I are in there having a drink, and you are serving behind the bar and have to make a judgment as to which one of us should leave.

Ms MACLELLAN—It states:

For the purposes of this act, a person is in a state of intoxication if his or her speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing this is a result of the consumption of liquor.

That is the definition. The act also requires that I prepare a set of guidelines to flesh out that definition. Many of the signs of speech, balance, coordination and behaviour are taught in responsible serving of alcohol training, but the guidelines will be broader than that. The guidelines are very much in draft form at the moment and are out with my many stakeholders for their comments, ranging from health authorities to licensees to other people, to ensure that they can properly understand and reflect those five features reflect. That definition is consistent with one that was proposed to be put in the New South Wales legislation, but has not got there yet, and is similar to Western Australian legislation.

Mr MULDER—That sounds very much like the old definition in evidence given by police: 'His breath smelt of alcohol, his speech was slurred, his vision was blurred and he was unsteady on his feet.' That is pretty much what that is saying, isn't it?

Ms MACLELLAN—That is correct.

The CHAIR—Sue, you touched on an issue I was just going to raise again. Going back to the RSA programs, the Responsible Serving of Alcohol, what is entailed in those programs? What do people train in?

Ms MACLELLAN—I have brought you each a copy of an RSA training course. It is a course for employees. It is a course that runs over a period of hours. In other circumstances, for example, for licensees, it is run with Licensees' First Step. For club members, it would be run after a club seminar. There is also an online refresher course for those that did RSA training a number of years before and need, say, every two or three years to update their course and gain a certificate. Some 232 organisations are accredited to provide the RSA course, with about 643 trainers across Victoria providing it. However, I have to accredit the course, so it is a consistent course run throughout Victoria. It is consistent with courses run in other states, and there are moves between my fellow Magistrates and Director colleagues to recognise training done in Victoria interstate. At the moment it is not, but there are some moves between the states to ensure that the course, if done in one state, is recognised in another state, so that a certificate would translate across.

Mr BISHOP—Do I recollect correctly that William Angliss were doing the course?

Ms MACLELLAN—William Angliss do this course and Licensees' First Step.

Mr BISHOP—But there are others that do the course as well?

Ms MACLELLAN—For RSA there are 232 training organisations. Licensees' First Step was a pilot program which we ran through William Angliss. It has now been moved to three other TAFEs and two private providers, but it is the same course. The content is identical.

Mr BISHOP—So that is spread all around Victoria, is it?

Ms MACLELLAN—That is right. That was to spread it around Victoria. That course started in 2004, and all new licensees must do that course before they can obtain a liquor licence.

The CHAIR—Any licensee who wants a liquor licence does the First Step?

Ms MACLELLAN—And RSA, yes - both.

Mr BISHOP—I think the query was raised - not during this hearing - as to, say, a bowls club changing their licensee. It would be a volunteer office-holder, but they had to come down here at one stage to do it.

Ms MACLELLAN—That is right.

Mr BISHOP—That has been solved?

Ms MACLELLAN—Solved. It has been put to me by the people that run the Good Sports program, which is targeted to sporting clubs, that, because CAV Liquor Licensing and Good Sports run the Club Seminar together, that course should also be recognised for small sporting clubs, volunteers, which would equally cover RSA training. Obviously, to be accredited for Good Sports you need to have RSA in the club, and equally the Club Seminar would be the equivalent of Licensees' First Step for people operating small clubs.

Mr BISHOP—Can you make available to us where those courses are now available?

Ms MACLELLAN—I can. I have not got it with me today but I am happy to make that available, yes.

The CHAIR—Sue, do sporting clubs do the Good Sports program?

Ms MACLELLAN—They may; they can. It is strongly encouraged.

The CHAIR—They can but they do not have to?

Ms MACLELLAN—No, that is run by the Australian Drug Foundation, but I am a total supporter of the Good Sports program. It provides three-step level accreditation for sporting clubs on the provision and use of alcohol in a club environment. There are many clubs in Victoria that have done the course and are accredited and are striving towards increased accreditation.

The CHAIR—But it is not compulsory for a sports club to do any program?

Ms MACLELLAN—No, but it is strongly encouraged. I would have to say that many sporting clubs across Victoria were not licensed; were serving liquor without a licence. There has been a tremendous push not only to get them appropriately licensed but also to improve the quality of training. But, equally, many clubs are run by volunteers, and there is a recognition that with a volunteer group you have to be more flexible in catering the training, to enable volunteers to do that outside their normal work environment. Unlike a licensee who is going to be working in the industry full-time, volunteers are doing this on a part-time basis. There has been a strong push to accommodate that, particularly in small clubs, where the tradition has been a keg on Sunday, and to move things into a more appropriate setting and appropriate management of alcohol issues in a club.

The CHAIR—Do we have any percentages on what sporting clubs have done, such as the Good Sports program?

Ms MACLELLAN—I could get from the Australian Drug Foundation the figures as to how many people have done that.

The CHAIR—We could do that just as easily.

Ms MACLELLAN—Yes. Certainly, it is a program that has been totally supported. It was launched in Victoria. It is now rolled out in South Australia and two weeks ago in Queensland, and Tasmania has also taken it up. It is a Victorian initiative that is well respected and regarded in terms of dealing with sporting clubs.

The CHAIR—Are there any other questions?

Ms MACLELLAN—I will leave you with the Licensees' First Step. Sorry, I have only one because it is not mine.

The CHAIR—As I alluded to first up, I am from Geelong, and I recall that probably 12 months ago there was a young person killed out on the road to Colac, between Deakin University and the pub that is there. There was another example just beyond Ballarat, west of Ballarat. Does the commission have any position with regard to educating especially younger people or informing people of the dangers of drinking and walking?

Ms MACLELLAN—We have not done any work on the dangers of drinking and walking. Most of the material that is put out by both the federal government and the state governments are about a responsible consumption of alcohol and the health effects of drinking, and issues that relate to intoxication, but not specifically on walking and drinking. However, I recognise that people are encouraged to walk rather than drive and it can be equally dangerous.

The CHAIR—Thank you, Sue. Thanks for your time. As I said, we will make a transcript and we will provide you with a copy of that transcript in due course, and when we have completed our review of the pedestrian safety report we will also provide you with a copy of that.

Ms MACLELLAN—Thank you.

The CHAIR—Thanks for your time. We appreciate it.

Witness withdrew.