

Woolworths and Coles receiving licences as retail outlets for beer. The small man can live with a viable industry and it is the large supermarkets which cause damage. As I stated earlier, this Government is doing nothing for the industry by introducing this measure—it will not help it one iota. The result will be contrary to what the Government believes. It will not happen in this industry as Hamer tries to make it happen. The Bill will give no relief to the industry because it has more problems than the problem of packaged beer.

**The Hon. J. V. C. GUEST** (Monash Province): When I was elected I could not have thought of a more unlikely subject for my maiden speech than beer prices, except perhaps to speak in favour of fixing prices. I take pride in the fact that, as a businessman and Liberal supporter, my father played a considerable part in the 1950s and 1960s in persuading the Government to introduce trade practices legislation.

Before I proceed with what I might once have thought an unlikely course, may I do something which I have been looking forward to for some months, namely, to pay tribute to my predecessor for eighteen years in the Monash Province, the Honorable Graham Nicol. I have long known him as a most honorable and loyal supporter of the Parliamentary institution and also of the party which he represented. Since my election I have come to understand how much Mr. Nicol is missed by his former colleagues and how rightly he was honoured as a man to whom our Parliamentary traditions were a vital part of everyday life. I am delighted to say that he is now my electorate chairman. Nothing could better exemplify his concern for the welfare of Victoria and his loyalty to the institutions with which he was long associated.

It has been suggested to me that I might digress from what I was going to say and that suggestion is one, I

regret, that I find easy to accept. I did not confuse myself by listening to Mr. Galbally before dinner. I understand that he raised the spectre of purchasers being prosecuted for aiding and abetting sellers of liquor at prices other than the fixed price. I have been referred to the case of *R. v. Barry; Ex parte Connor*. It has been pointed out to me—and it is quite clear—that a person cannot simply aid and abet an offence of selling in contravention of the law unless the law is to be regarded as the kind of ass which nobody has really suggested. It should not be regarded as reasonable that every purchaser should know all the facts and the law relating to the seller of the product in question and that this offence could be brought home to the purchaser. That, I suggest, is entirely unreasonable and indeed the law has long since decided this point.

To illustrate the point, on Mr. Galbally's view the purchaser would be in trouble with the law if by chance he was sold beer when the health regulations in relation to toilets were contravened. This is absurd.

However unlikely I might have thought it that I should speak in favour of fixing beer prices, I now speak without any qualification in favour of this Bill and—an important addition—the inquiry which has been set up at the same time. The basic facts of the industry have been dealt with adequately and at length. The point has also been well made by others that we as legislators are responsible for the condition of unfair competition in the industry. I shall not cover this aspect of the argument.

I have chosen to make this Bill the subject of my maiden speech because I believe it involves a vital moral and philosophical principle which must be upheld. Perhaps, as it is a maiden speech, I may appeal for some fair-minded consideration of values which I believe nearly all of us here would hold most strongly. On my part it is fair to say and to accept that our friends opposite represent a movement which has strong moral roots

in its origins in Australia, in England and elsewhere. There has been a strong emphasis on fairness and justice, amongst other moral values.

It may be remembered that both the Tories and the Socialists were equally opposed to the inhumanity of nineteenth century *laissez faire* industrialism. Therefore, I hope there may be some agreement on the statement of principle which is in fact a statement by a Tory writer who said—

The moral obligation on every individual and on any society is not to falsify expectations made legitimate by express permission or tacit consent.

He went on to say—

This principle of legitimate expectation is one of fundamental honesty, and it is in grave danger today.

That is a principle which I believe we must uphold by supporting this Bill. This view is reinforced when one looks at the wider consequences of not supporting the Bill. Before I say any more of this general character, I want to point to aspects of the Bill and to circumstances of the liquor industry which invoke this principle.

In the 1950s licensed premises in Victoria showed all the signs of neglect through lack of money and materials naturally resulting from the depression and the war. The physical consequences of this neglect were greatly aggravated by a well-known private monopoly which pursued a policy, now apparently approved by at least 51 per cent of our friends opposite. This was a policy of selling beer to consumers at the lowest possible retail price regardless of all other factors. As a result of these facts, the Phillips commission was set up and in the 1960s it found that there was a general public demand for accommodation, meals and other improved facilities in both hotels and licensed groceries. It was therefore natural for all parties in 1968 to accept that there was a valid reason for setting up a structure of control for the liquor industry which honorable members know has little in common with any model of free competition.

*The Hon. J. V. C. Guest.*

Whatever we may now think the structure of the industry should be, we cannot ignore the fact that the community, for more than 100 years, has been interfering in the industry. We cannot forget that in 1968 we embarked upon a deliberate policy for the benefit of the community. We cannot go back on what has happened as a result of what was done in 1968. We cannot say that everything the Liquor Control Commission has done since then, in the belief that it was carrying out our policy for the community benefit, was wrong and that we should abandon the unfortunate licensee who trusted the Liquor Control Commission. We cannot ignore the fact that as a result of encouragement from the Liquor Control Commission, licensees incurred expenditure totalling \$79 million on structural improvements, \$36 million on new hotels, and countless millions of dollars on goodwill.

Unfortunately, some superficial observers, such as editorial writers, and other people who are not willing to bestow hard thought or adequate research on the industry, say, "So what? These people do not have to invest their money. We encourage people to do lots of things but it is up to them to judge whether they should put their money into them". They refer to garages selling petrol or to stallholders at markets, but the same principle does not apply to them because deliberate encouragement was given to the liquor industry having the moral status of a contractual promise. This is true because from 1968 to 1975 every retail bottled liquor licence had imposed on it the condition that the licensee should not engage in price-cutting. I do not know how many of our friends opposite were aware of that when they made their report but to me this is a fact of fundamental importance because the Liquor Control Commission was acting for the Government, for the Parliament and for the whole community. It had promised the

industry that it would act to prevent a reduction of the profit margin below accepted levels.

The commission had to do this if it were to achieve the objectives of the Act. It is known to all of us that any businessman planning an investment must plan the means by which he will recover his investment. He has to know that his required cash flow will flow from his profit margin on the product sold. The Liquor Control Commission accepted this and told him that if he were going to spend the money which it required him to spend as a condition of obtaining or retaining his licence, he could rely on a reasonable cash flow to recover his investment. The commission knew that it would take several years to recover this investment and in taking notice of this fact it was playing its part on behalf of the community.

Over the past seven years, every one of us could have raised objection to the undertaking given by the Liquor Control Commission to the liquor industry. It must be remembered that the commission was acting on our behalf. We could all have argued loudly for the free market principles that we all support, for the other man's industry, but we must acknowledge that we allowed the commission, in its innocence, to think that it was pursuing the best interests of the community as indicated by the 1968 legislation. It is not for us now to allow the assurances given to the community to be dishonoured overnight.

The point that I make is a precise one. I have not mentioned the licence requirements on licensed grocers to provide refrigeration or free home delivery. These are in fact in a different category.

I do not want to spoil a good point with a bad one. There is no doubt that within a short time these requirements on retail liquor licence-holders could be removed by the commission almost as quickly as price cutting can be commenced. What I am saying is that any businessman must calculate as best he can

the future cash flow which he needs, and which he can expect in order to justify a capital investment. This is commonplace, and I do not know how members of the Opposition have managed to cloud their minds to this. As a community we have given that promise to the liquor industry, as much as the Japanese have given to our iron ore and coal miners a guaranteed cash flow to justify their investments. The Australian Wheat Board has guaranteed something in the way of cash flow to wheat producers. The Federal and State Governments have given a guarantee to the home-owner whereby he can calculate what he can afford to pay for his house because of the preferential interest rate that has been promised. They do not change the interest rate overnight.

The community wants competition in industry, and specifically it wants price competition in the liquor industry. However, it cannot have it so long as it is bound by a moral obligation because of the promise given to the liquor industry. The only alternative is to pay outright compensation in the nature of damages. If we are to pay damages, to whom do we pay them? That would take some time to assess. Exactly how much should we pay? That would also be difficult to assess. At whose expense would it be—the education system or local government? That is up to those who oppose the legislation.

One suggestion, which I believe is no alternative, is that there should be a reduction in licence fees. Approximately \$2.50 or \$2.80 of the price on every dozen bottles goes in excise duties. Only approximately 49 cents represents licence fees. Even if licence fees were entirely eliminated, that would obviously be no solution. In any event, it misses the point entirely. The liquor industry does not need the opportunity to sell at lower prices because of the removal of a tax which has also been removed from every one of its competitors. It needs what it had

before, an absence of price competition. Let us face it, we are not about to restore fair competition in the price field. We must restore what we promised, which is no competition in the price field. Anyone who doubts that had better do the calculations instead of mouthing something which he has heard from someone else as a possible solution.

Of course, there is a conflict between the community's desire for price competition and the obligation to the liquor industry. There is only one key to the resolution of this conflict: It is simply to decide how long price support must be maintained. That is why the inquiry has been set up, and obviously that is one of the main matters it must examine. The learned Leader of the Opposition, as a lawyer, would, I am sure, support my view that this is simply a question of fact to be looked at objectively and requiring much hard work. When did the industry get fair warning that it could not rely on supported gross profit margins? How many years from the time it first received that warning is a reasonable time for writing off its investments? Once the cardinal importance of the principle of legitimate expectation created by our promises to the industry is accepted, we begin to ask the right questions and to look at the relevant facts. That is what the inquiry is all about.

I have referred to the fact that until 1975 the Liquor Control Commission had adopted the practice of putting a condition against price cutting on every retail bottle liquor licence. To be fair, I must concede that the Retail Liquor Merchants Association and the Australian Hotels Association, on the evidence that they put before the Brokenshire inquiry, have been aware for some years of the dangers to their profitability from the Trade Practices Act. However, it is not for us, speaking without detailed knowledge, to say precisely when they should have known. This is something which must be

examined with care by the inquiry. We cannot simply say that because in 1971 the Retail Liquor Merchants Association changed its fixed prices into recommended prices, for five years they have known all about it. Nevertheless, I have no doubt—and it is very reassuring—that the industry cannot claim 7, 8, 10 or 12 years in which to write off its investments. I would hope one year would be sufficient, but I would not be honest if I did not say that I do not believe we can do what we must do by simply establishing fair competition. It cannot be done because we have promised more than that. If a person paid, say, \$50,000 for a licensed grocer's goodwill two or three years ago, and if he was justified in thinking he could do it despite the existence of the Trade Practices Act, it is not of much use telling him that he will have to face cut-throat competition next year if he has been reasonably calculating on a much longer time to write off his investments.

I was astonished to hear imputations against Mr. Brokenshire, apparently on the ground that everyone knew what his inquiry would produce. I would not dispute that nearly every one was fairly confident of the result of the inquiry by the time the evidence had been given. My source of information, when I started as a rabid believer in price competition and a rabid disbeliever in the idea of fixing minimum prices, was a staunch member of the Australian Labor Party, a professional man closely associated with the inquiry, who told me that on the evidence closely associated with the inquiry, could find otherwise than that a minimum price should be fixed. That is when I began looking into the basic facts of the industry which have led to my conclusions.

There is yet another general ground for supporting this Bill which to some extent has been overlooked, certainly by members of the Opposition. The consequences of failure to enact the Bill

must not be overlooked for the effect it can have on the economy in general and the free enterprise system in particular. In a free enterprise economy businessmen simply will not make long-term investments without a reasonable degree of certainty on which to base their plans. They must have a reasonable degree of certainty for planning whether they are Socialists, capitalists or simply free enterprise businessmen. It is easy for a businessman to tolerate large uncertainties if the variables are small. He will not become unduly worried if the price of paper clips trebles in the next two years, or if the lifts in his office building cost twice as much to service in the next couple of years, but the actions of Government are an entirely different matter. For almost every industry they are momentous in their consequences.

Today the biggest single inhibition on the investment which this country desperately needs is uncertainty in the area of Government policy, Government actions and Government charges. If Governments do not seem to understand the principles upon which businessmen make their investments, then a grave blow is dealt to the economy of the country. When we are fairly and squarely confronted with the need to support a principle as we are now, every time we fail to support it we deal a blow to the confidence of businessmen and to the recovery of the economy. Therefore, I have taken this opportunity to support the proposed legislation because it upholds a vital principle. If we do not support that principle, there will be a flight of capital and of jobs to countries where businessmen consider the Governments are more reliable, such as Singapore, Hong Kong and the United States of America.

I return to the general proposition that we support the principle that legitimate expectations must not be defeated when those expectations have been raised by our own

acts or omissions. The law even now does not fully recognize the legitimate expectations that a man has of his property. In recent years the home-owner has been given reasonable assurance of compensation if his property is acquired, but there is an increasing concern about the effects of planning, about conservation zoning of properties which have been farmed and which the owners are likely to want to continue farming with whatever methods they wish by cutting down trees, or whatever is necessary for their activities. We are also faced with the problem of a man who has a residential block in a subdivision which is now regarded as unsuitable for residential development. It is rezoned rural or for some other purpose designed for public benefit. In the near future the fact must be faced that the community has taken for its benefit part of the legitimate expectations of the owner of the property. In the event that there is little sympathy for owners of property let me suggest that the principle applies equally to the vested interest which workers have in their jobs and which investors have in heavy and light industry in the manufacturing sector.

If we do not support the principle which underlies the Bill, we will have no ground for complaint if the Industries Assistance Commission simply removes its protection from jobs and industries in Victoria by saying they are overprotected, that they are making the consumer pay too much and should be phased out, not over 5, 6 or 10 years, but overnight. There are many similar examples which need to be considered to ascertain how vital this principle is to the economy of the country.

In 1973 the Whitlam Government removed many of the special provisions of the tax laws relating to mining companies, many of which dated back to the Chifley Government. Many people said that was well done and it was done quickly—that they made these tax laws much fairer. In reality they imposed a

20 per cent capital tax overnight on all investors who had been foolish enough to trust the Government and accept its inducement to invest, in the same way as the Liquor Control Commission writes into its conditions inducements to invest in the industry.

If we fail to enact this Bill we will be imposing a capital tax of far more than 20 per cent on the investments that people have made in good faith in the liquor industry and placing a tax of 100 per cent on a new form of property which is never subjected to criticism by members of the Opposition—that is, the property that people consider they have in their jobs. Undoubtedly many people will be totally deprived of their jobs if we fail to pass this Bill. Therefore, we must pass it to uphold a fundamental principle, and we would be failing in ordinary honesty if we did not do so. For these reasons I support the Bill and I add only my thanks to honorable members for their courtesy in listening to me.

**The Hon. J. M. WALTON** (Melbourne North Province) : Firstly, I offer my congratulations to the honorable members who have made their maiden speeches tonight, Mr. Landeryou, Mr. Taylor and Mr. Guest.

I believe them to be thoughtful and sincere, but I must confess that at times they were provocative. There were times, when honorable members on this side of the House, and no doubt those on the other side of the House considered that one had to bite one's tongue not to interject. Nevertheless, it is a courtesy extended to new members in this House as well as in the other House, because it is the first and only opportunity that one gets without being declared "open season".

It is with trepidation that I embark on joining the argument of the giants. On the Labor side we have Mr. Galbally, Q.C., and on the Liberal side Mr. Storey, Q.C. A strong part of Mr. Galbally's argument was that under

the proposed legislation not only will the person who sells the liquor be committing an offence if he sells it below the ruling price, but so also will the purchaser. Mr. Galbally put that argument with force and supported it with evidence. In the early stages members of the Government party were inclined to pooh-pooh what he said, but as he proceeded with his argument those honorable members who did not leave the Chamber to check on the issue began to agree with my Leader. Mr. Long, by interjection, said, "I agree with Mr. Galbally." During the suspension of the sitting it was possible for Mr. Storey to dig through the archives to find something that might be an argument against what Mr. Galbally put forward.

**The Hon. A. J. HUNT** : Mr. Storey was away at a reception.

**The Hon. J. M. WALTON** : I cannot help what the Attorney-General's habits are when the House is meeting. I gave my generous interpretation of where he may have been. The Attorney-General referred to a case which was reported in the *Australian Jurists Reports*, volume 5, 8th September, 1874. The case involved Michael Flannagan, who was convicted of selling liquor in his licensed house on a Sunday on the evidence of the relator. An offence was laid against the relator under the Justices Act for aiding, abetting, counselling or procuring the commission of such an offence, and he was convicted. Those same terms are used now in our own Magistrates' Court Act. The force of the argument Mr. Storey put forward was at the end of the report which said—

It was said by Mr. Justice Barry : We think the conviction was wrong. A buyer does not sell. The doctrine of accessory is applied only to an indictable offence in which there is a principal offender—

Since that time we have the Magistrates' Court Act. Whatever the position might have been then, it was subsequently changed by other cases