LIQUOR CONTROL AMENDMENT BILL 2018

Second Reading

Resumed from 14 June.

HON AARON STONEHOUSE (South Metropolitan) [7.39 pm]: I am happy to resume my comments on the Liquor Control Amendment Bill 2018. The explanatory memorandum sets out the intent of the bill with three points —

- facilitate a more tourism-friendly hospitality culture;
- implement strategies to reduce harm; and
- remove regulatory burden and improve the administration of the Act.

I am sure these are outcomes that all of us would like to see, but when we look at the details of the bill, it becomes far less clear. This bill does indeed go some way towards cutting red tape and reducing the regulatory burden for some businesses and it may indirectly facilitate a tourism-friendly culture, but it in no way reduces alcohol-related harm. Instead, it seeks to promote one business model of retail liquor over that of another; it pits small business against big business in what might be described as little more than populism. In fact, it joins an ever-growing list of what I call "feel good" legislation—that is, legislation that sounds good in passing, but is ineffective or unnecessary, or built on faulty assumptions and mischaracterises the cause of a problem or imagines a problem when one did not exist and then incorrectly prescribes a solution. The maximum life penalty for drug traffickers legislation; the no body, no parole bill; the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill; and the Tobacco Products Control Amendment Bill are just a few examples of this.

Before moving on to what is wrong with this bill, I first recognise that there are some provisions that get it right. I must commend the government for embarking on this effort to cut red tape further, even if by only a small measure. It was Mark McGowan as Minister for Racing and Gaming who in 2006 introduced a number of reforms to liquor licensing. After so many years of the Liquor Commission being run by what seemed to be members of the temperance movement, these amendments are a welcome change for many in the industry. This bill will give Tourism WA an opportunity to weigh in on licence applications, such as is currently afforded to the Commissioner of Police and the Chief Health Officer. This, again, is a welcome change. Karl O'Callaghan, the former fun-police commissioner, certainly did no-one in the industry any favours with his attitudes towards alcohol. That is about as much credit as I will give the government.

The explanatory memorandum states —

> As a strategy to minimise the adverse impact that packaged liquor outlets can have on the community, the Bill inserts new section 36B to enable the licensing authority to manage the number of packaged liquor outlets where sufficient outlets already exist within a locality. This will be complemented by additional amendments relating to large packaged liquor outlets being established in close proximity to an existing large packaged liquor outlet.

It is generally recognised that large packaged-liquor outlets offer a wider selection at a cheaper price, so the assumption here seems to be that cheap and plentiful alcohol leads to more alcohol-related harm. This bill removes restrictions around small bars with an aim of facilitating tourism. The Premier has talked about attracting hipsters and creating a more sophisticated drinking culture. That sounds great for inner-city elites, but what about us poor bogans in the suburbs? The Premier is ignoring his core constituents of Rockingham, of whom I am actually a member. Why should tourists be afforded special consideration while those buying cheap liquor from retail stores are treated with disdain? The implicit assumption here is that poor people, who benefit most from cheap alcohol, are too stupid to make their own choices about what amount of alcohol they consume and where.

The claim that there is an adverse impact caused by packaged-liquor outlets is somewhat unsubstantiated. Strangely, this bill does not treat all packaged-liquor outlets equally; it specifically targets those over a prescribed arbitrary size. The rumour is that that size will be somewhere around 400 square metres. Then again, somewhat strangely, it targets those outlets that are being established in close proximity to an existing large outlet. The rumour again is that the prescribed distance will be around five kilometres. Why? What health impact is there of two stores opening in close proximity? There is none that I can see and none that the government has offered. That begs the question: are these restrictions aimed at harm reduction or is it merely protectionism? I will get to that in a moment, but for now let us have a look at what the available data tells us about the relationship between packaged-liquor outlets and alcohol-related harm.

The main question we should be asking ourselves here is: does a proliferation of packaged-liquor outlets lead to an increase in alcohol consumption? That is the implicit assumption in the explanatory memorandum. The answer is no; the data shows that national alcohol consumption per capita has been decreasing, while at the same time the

number of packaged-liquor outlets, including large liquor outlets like Dan Murphy's, has increased. The data shows an almost inverse correlation between the number of packaged-liquor outlets and alcohol consumption. Does an increase in the number of packaged-liquor outlets contribute to violent behaviour, such as domestic violence? Data from New South Wales shows that between 2005 and 2017, the number of packaged-liquor outlets almost doubled. Over that same period, alcohol-related domestic violence decreased, alcohol-related non-domestic violence decreased, and alcohol-related assaults against police officers remained stable and relatively low. Members may be concerned that large packaged-liquor outlets like Dan Murphy's sell only cheap alcohol and that that will drive more consumption. That is not true again; they carry a wide range of alcohol at various price points. Their largest category is wine, making up 57 per cent of sales. Fifty per cent of their wine range is priced at over $20, 22 per cent of their wine range is priced at between $15 and $20, while wine under $5 represents merely three per cent of their range. Further, price is not the most important factor for consumers. Based on a survey conducted of customers of packaged-liquor outlets, price was not the most important factor for customers when deciding where to buy their packaged liquor. It turns out that convenience was the greatest factor, followed by range of product. In third place was price. We have assumed that people will blindly buy whatever is cheapest in large quantities. I think people are a little more discerning than we give them credit for. In fact, sales of cheap alcohol continue to decline. Cask wine sales have been on a downward trend since 2003, despite cask wine being so cheap.

When discussing alcohol or tobacco controls, we often hear that all too familiar cry from the Helen Lovejoy types: "Won't someone think of the children?" Over the past 10 years, the rate of drinking amongst the youngest age groups has declined. In particular, ages 12 to 17 years saw a sharp decrease in the number of those engaging in what is considered risky drinking. The same group also saw a significant increase in the number of those who are abstaining from alcohol entirely.

Australians already pay one of the highest rates of excise on alcohol in the world. It is often cheaper to buy Australian-produced alcohol overseas than it is to buy it here. For all our sin taxes, when comparing us with other nations, there is no correlation between the price of alcohol and binge drinking. In fact, it seems that social norms and culture have a stronger influence on harmful drinking. Often in the case of substance abusers, their demand for alcohol is inelastic of price—meaning that regardless of price, some people will continue to drink. Demand is, however, elastic to price for those who do not have a dependency, such as those who perhaps buy a single bottle of wine a week as an indulgence. Surely those are not the people we should be targeting. Australians are hammered by excessive taxes on alcohol as it is. We are pursuing a policy that will limit consumer choice and drive up prices. Heaven forbid that poor people should be able to afford a drink! That privilege, it seems, is for the hipsters and inner-city elites. The plebs can get by without alcohol because the intellectuals in the Australian Medical Association and the government know what is best for them. Of course, this whole exercise may be pointless with the increasing popularity of home-delivered alcohol. It seems that the market always finds a way to provide what consumers want, despite the best efforts of government.

I am not convinced that the people advocating the retail restrictions in this bill are doing so on the basis of harm reduction. When I have spoken to proponents of this, many have pressed the importance of protecting small packaged-liquor outlets from the competition of larger liquor outlets like Dan Murphy's. That has nothing to do with harm reduction, but it is the conversation that is going on behind the scenes. The introduction of arbitrary size and distance restrictions will certainly have some impact on large packaged-liquor outlets, but the reintroduction of the needs test will apply to all packaged-liquor outlets, regardless of their size.

I quote from the second reading speech —

> In addition, to prevent the further proliferation of small and medium packaged liquor outlets across the state, the act will be amended so that the licensing authority must not grant an application unless it is satisfied that existing premises in the locality cannot reasonably meet the requirements for packaged liquor.

This bill will restrict large outlets in favour of small outlets. It will also restrict new competitors from entering an area in favour of established businesses. This is blatant market interference, using the coercive power of the state to protect established businesses from fair competition. The government is essentially picking winners and losers here, rather than allowing consumers to decide when and where they shop.

The Harper review has been referred to on occasion in this debate, but I wonder how many honourable members have actually read its recommendations. Although the review does not explicitly call for deregulation, it urges that whatever benefits result from regulation, they must outweigh the costs. It also urges regulating to the benefit of consumers, rather than to the benefit of a particular competitor or in support of a particular business model. The Harper review talks broadly about removing barriers to entry, increasing the contestability of markets and

increasing consumer choice. The bill before us specifically targets larger outlets and protects established outlets, so it is hard to see it as being anything other than contrary to the recommendations of the Harper review.

Perhaps the most absurd argument I have heard in favour of these restrictions is that they are essential for ensuring that competition continues. It seems that some people are concerned about large outlets becoming monopolistic. This seems unlikely; the market is currently split roughly three ways between the two large outlet chains and the independent and smaller outlet chains. That is not a monopoly. Still, I have heard concerns about predatory pricing—that a large chain could sell goods at below cost for long enough that its competitors could no longer compete and would eventually shut down, at which time the large chain would have a 100 per cent market share and could set prices however it liked. This kind of predatory pricing does not exist. Sure, loss leaders are a thing, but selling under cost for long enough to drive competition out and form a monopoly does not work. It has never been achieved, for the simple reason that no business can sustain a loss long enough to achieve total market control and then maintain that control long enough to recover its losses. Once the hypothetical chain had control, it would need to recoup its losses, and would have no other option but to increase its prices. Those increased prices would act as a signal to competitors to enter the market, and the chain that engaged in predatory pricing would no longer have a monopoly. This is what happens in a free market when barriers to entry are low. This is pretty basic economics. If any members disagree, I would like to hear them give me an example of predatory pricing working to create a monopoly without government interference. It has never happened.

I have heard arguments that large packaged-liquor outlets like Dan Murphy's have taken over the market. However, an increase in large packaged-liquor outlets has not resulted in a reduction or consolidation of liquor stores. Between 2012 and 2018, 105 packaged-liquor outlets opened in WA, and 69 of those outlets opened within five kilometres of a large packaged-liquor outlet. Over the same period, only 20 packaged-liquor outlets have closed, six of them within five kilometres of a large packaged-liquor outlet. Clearly, a proliferation of large-format outlets has not resulted in smaller outlets closing en masse; on the contrary, over the past six years, 69 new outlets have opened in close proximity to large-format outlets.

I have heard some people claim that local communities do not want large packaged-liquor outlets in their suburbs. This is a strange statement to me. Apparently, the people claiming this know more about what communities want than the communities do. People vote with their feet and with their wallets. If they did not want large-format outlets in their suburbs, they would not shop there; obviously, they want them. In fact, the "National Drug Strategy Household Survey 2016: detailed findings" report shows that the least popular method for reducing alcohol-related harm is increasing the price of alcohol, followed by reducing the number of outlets. Do not be misled by the health lobby, special interest groups or rent seekers: these measures are not popular.

Worst still, I do not think this will help small retailers much at all. Large outlets like Dan Murphy's maintain a price advantage due to their increased purchasing power. Large outlets also benefit from efficiencies gained by economies of scale and can afford to maintain larger inventories. Large chains of outlets also often employ more sophisticated supply chains and logistics than their smaller competitors do. An arbitrary limit on floor space does nothing to address the advantages large outlets have over smaller outlets. In fact, I suspect that if we were to introduce a 400–square metre floor space restriction, large outlets would change their business model slightly and we would start seeing 390–square metre Dan Murphy's stores. Prices may go up slightly, but larger outlets would likely still maintain an edge over their competitors.

Let us assume for a moment that these restrictions protected established outlets from further competition. What would happen to the consumer? Without competition and disruption, there is no innovation, and there is no downward pressure on prices. It would be consumers who paid the price of protectionism, as they always do. Small independent breweries, wineries and distilleries would also bear the cost. Large format outlets can afford to carry a wider range and take risks on stocking more niche products, whereas smaller outlets often do not have that luxury and must prioritise their limited shelf space with products they know they can move quickly. An effort to protect small business retailers will hurt small business producers.

If smaller outlets want to compete with large outlets they should not turn to the government for special treatment, and we as legislators should do what we can to reduce the regulatory burden on them. We should cut red tape, cut taxes and simplify the licensing process. Red tape is, in many ways, regressive. Larger businesses often have entire teams dedicated to navigating government bureaucracy, something that a small mum-and-dad business cannot afford. This approach should be taken in response to complaints about pubs and bars competing with pop-ups operating on occasional licences. Rather than introducing a public interest test for pop-ups, I would rather remove the public interest test entirely.

Hon Alison Xamon interjected.

Hon AARON STONEHOUSE: Probably not!

These retail restrictions will have the effect of preventing businesses from expanding beyond their current size. In this populist fight to protect small business from big business, we forget that every big business started as a small business, with an entrepreneur taking a risk. Dan Murphy in fact started with a single small liquor store in 1952, before growing his business to five stores across Victoria and selling to Woolworths in 1998. We will be denying small businesses that opportunity to grow into the future. We should be advancing policy that provides consumers with real choice, not this top-down approach, with government bureaucrats deciding on what street corner a liquor store can be established. This is a state of more than 2.6 million people; rather than centralising these decisions, we should be decentralising them. Let consumers and business owners decide the best locations for their stores through voluntary interaction with the marketplace. Government has a role in managing negative externalities, of course, but it should not take an active role in the economy to protect businesses from competition at the expense of consumers.

We are considering a bill that has conflicting stated intentions. The bill aims to facilitate a more tourism-friendly hospitality culture and to implement strategies to reduce harm. These two aims seem opposed, and the government has not reconciled them adequately. This bill promotes one form of drinking over another, without providing an explanation for why. This bill promotes one form of business and punishes another. This bill enables government to pick winners and losers in the marketplace. But, most of all, this bill smacks of elitism. It is a paternalistic approach to regulation that is all too familiar from this Labor government. In the eyes of the current government, people are too stupid to know what is good for them. The government will tell us how much to drink and smoke and eat, and at what times and in what locations. In the last 12 months, the state government has called for the legal smoking age to be raised to 21. It has flirted with the idea of a floor price for alcohol. Some members may not be aware, but, in Perth, shots of alcohol are illegal, and so is mixing alcohol with energy drinks. In Perth, mixing a Jägerbomb is actually a serious crime. I am not too sure yet of the legal status of an Irish coffee, but I am trying to find out. Western Australia also has the heftiest fine in the country for vaping, at $45 000. People who build a slide in their backyard will be fined, people who do not have a fence around their pool will be fined, people who ride a bike without wearing a helmet will be fined and people who eat a bowl of cereal while driving along the freeway will be fined. Western Australia is building a reputation as a nanny state. It is no wonder our tourism numbers have been stagnant.

Several members interjected.

The ACTING PRESIDENT: Members, I think we are listening to Hon Aaron Stonehouse, and I think we should do that in a bit of peace and quiet.

Hon AARON STONEHOUSE: I welcome the reduction of red tape. However, many questions remain around the other provisions of this bill. How will prescribed distances be determined, and what will those distances be? How will size limits be determined? What impact will the size limit have on outcomes around public health? That is why I drafted a motion that this bill be discharged and referred to the Standing Committee on Legislation. This would not be first time in this Parliament that a bill has been discharged and referred to the Standing Committee on Legislation. It is my view that the potential economic impacts of this bill have not been fully understood. The impact on investment in this state, and the impact on employment, has not been accounted for by those advocating these retail restrictions. The standing committee process would provide an appropriate forum for these matters to be considered in detail. It would enable those with concerns about harm minimisation to examine whether the provisions of this bill will achieve the policy objectives set out in this debate. I have canvassed the members of the Legislative Council, and it is clear that not everyone shares my concerns. Therefore, I will not waste the time of Parliament by introducing a motion that is sure to fail. In the meantime, I have impressed upon Minister Papalia the need for further scrutiny of the bill and of the Liquor Control Act as a whole. I hope that if this bill is passed, the minister will consider reintroducing the statutory review to the act so that we can revisit these provisions in a timely manner. Until then, I will wait to see how this bill proceeds in Committee of the Whole. Thank you.

HON RICK MAZZA (Agricultural) [8.03 pm]: I wish to make some brief comments on the Liquor Control Amendment Bill 2018. As the explanatory memorandum states, the purpose of this bill is to facilitate a more tourism-friendly hospitality culture, and implement strategies to reduce harm. The purpose of this bill is also to remove regulatory burden, which is always welcome.

I will talk first about a number of provisions in the bill that seek to streamline or reduce red tape. The government is removing the requirement for clubs to seek approval from the director of Liquor Licensing of their constitution or any changes to it; provisions to provide flexibility under permits to make it easier for businesses to participate in micro-festivals; allowing an approved manager instead of a licensee to appoint a temporary manager in certain circumstances; removing the need for small restaurants to pay an application fee for an extended trading permit if done so within 12 months of the commencement date; facilitating intra and interstate licensees attending licensed premises for the purposes of providing free samples and taking orders at events such as food and wine shows or exhibitions; establishing a separate licence category for licensed restaurants with a capacity of 120 people, or

fewer, to be able to serve alcohol without a meal; and allowing producers of beer, wine and spirits to sell and supply liquor for consumption on and off licensed premises. The bill will also allow consumers to take their unfinished bottle of wine home after having a meal at a licensed premises. That is a very practical outcome. Many people would have a meal and a bottle of wine, and they would get halfway through the second one and would probably have had enough, but the temptation to drink the rest of it rather than waste it is fairly strong. So allowing people to take that bottle of wine home is a very good initiative.

Hon Darren West: For cooking!

Hon RICK MAZZA: Whatever the purpose may be, Hon Darren West.

It is great that the government is proposing to take away a regulatory burden that no longer serves the liquor industry sector of the community.

The second point I would like to make is the importance of tourism to our state. Tourism is a key economic driver, generating 104 000 jobs and injecting $11.8 billion into the Western Australian economy by gross state product. It is important that this state has legislation that promotes tourism and encourages people to visit our state and enjoy the many hospitality establishments in Perth and the regions of Western Australia. As such, I welcome the provisions in the bill that will allow clubs to sell liquor to non-members who are visiting the area. That is a good initiative, particularly in the agricultural region, in which a lot of country clubs exist, because it will enable people to enjoy those surroundings.

The third point I would like to make is that I support the idea of relaxing liquor legislation so that we may enjoy a more cosmopolitan lifestyle. The minister said to me in the initial briefing that he would like to see a European lifestyle in this state in which people can enjoy the hospitality that we have in Western Australia. That will reduce red tape for business owners. However, we also need to take responsibility for ensuring that young people in our communities are protected. We need legislation that will protect those who are vulnerable and those who are susceptible to alcohol abuse. There is a growing trend to purchase liquor online. That is creating higher sales for businesses, and convenience for consumers. However, it is also creating the unintended problem that underage children are able to quickly bypass the age verification on online systems and order liquor. I look forward to seeing regulations that will mitigate this activity by restricting the delivery of liquor to underage persons. I also look forward to hearing what programs the government plans to put in place to reduce the ability of underage people to access alcohol.

In keeping children safe, we must also ensure that vulnerable communities are free from drunken and antisocial behaviour. Section 64 of the act allows for limiting or prohibiting the sale of alcohol from licensed premises by imposing conditions on liquor licences. These restrictions can be imposed on all licensed premises within a particular area of the state. Currently, 40 communities are listed under section 64 of the act. On the other hand, section 175 of the act allows the government of Western Australia, on the recommendation of the Minister for Racing and Gaming, to declare an area of the state a liquor restricted area and to prohibit the bringing in, possession or consumption of alcohol in that declared area. Currently, 22 communities are declared under section 175. The community of Kalumburu is the latest community to be declared a liquor restricted area, at the request of community leaders, making it an offence to sell, supply, possess or bring liquor into that community. My understanding is that the amendments in this bill will reduce the incidence of sly grogging and allow the police to seize and destroy alcohol that has been brought into a declared area. However, I am not sure how many everyday people will get caught up in this when they head into our beautiful state of Western Australia. I understand that new provisions will be made within the regulations to create a defence in the case of a person who is carrying liquor for the purpose of lawful sale, such as delivering liquor to liquor licence holders. I also understand there may be a defence for the carriage of liquor by genuine tourists. I would hate to see grey nomads who are wandering around the countryside get pinged with a $10 000 fine for having on board a few bottles of wine and some beer. Hopefully, this bill will provide some protections for those people. I understand that there is a website but I do not know how many people might check that website before they head off and inadvertently get caught up in a declared area with packaged liquor on board. I would like to see how that currently works and what it would look like in the future. The minimum fine is $1 000 and the maximum fine is $10 000.

The next issue relates to the maximum floor space and distance between packaged-liquor outlets. As a strategy to minimise the adverse impact that packaged-liquor outlets can have on the community, there is talk about providing maximum floor spaces and distances between liquor outlets that are over 400 square metres. It depends on what the purpose of these regulations will be. These regulations have not yet been put in place. We are putting the heads of power in place but we do not have those regulations to view. I have been assured by the minister that there will be extensive consultation around those regulations. It has been discussed that there will be a 400–square metre restriction on floor space and a five-kilometre restriction on the distance between stores, which could vary depending on the demographics, whether it is a country location, and population densities. If the 400–square metre,

five-kilometre issue is to reduce public harm, I do not know that that will actually be achieved. Access to alcohol is available to people whether large liquor stores are five kilometres apart or not. It has also been suggested to me that where there is a proliferation of liquor stores, alcohol consumption is higher because of exposure to those liquor stores. I would contend those liquor stores that have a higher density in a particular area are meeting a market for the demographic in that area more so than the other way around. If it is to reduce trade or reduce competition, it is probably a step in the wrong direction. However, as I say, we will wait to see what those regulations consist of.

I have met with representatives from the supermarket chains, small businesses and the hotel industry sector, as many members have. Each has their own patch and of course they are fighting fiercely to protect it. What are the stakeholders saying about the 400–square metre restrictions? The Liquor Stores Association of WA says that it is about preventing big box stores opening in an area where the consumer need has already been met. Woolworths' Endeavour Drinks Group says there is no evidence to support the proposal to limit floor size. It says that claims that limiting store size or location will increase diversity are unfounded, are not backed by credible evidence and clearly fail the pub test. The Australian Liquor Stores Association says this is anti-competitive legislation. It does not understand why the liquor industry and packaged-liquor licensees are being singled out when other retail industries are free to open stores of any size. The association says there is absolutely no evidence that the size of a store selling alcohol makes any difference in relation to harm. It said that if, as an independent retailer, it wanted to build a 500–square metre store, it would be restricted, but Bunnings can build a supersize warehouse store right next to a small hardware shop. Obviously each association has its own take.

I think it might have been Hon Alison Xamon who suggested that we consume on average 10 litres of alcohol a year, so we are a nation of drinkers.

Hon Alison Xamon interjected.

Hon RICK MAZZA: I thought the member said 10 litres. Anyway, that is around 14 bottles of wine or just over a bottle of wine a month. I think there would be many in this chamber very concerned that they would —

Hon Alison Xamon: I will give you the figures again.

Hon RICK MAZZA: Okay. That is quite frightening if 10 litres makes us a nation of drinkers.

Introducing floor space restrictions and appropriate distances between stores to ensure that there is not an oversupply of liquor in an area already serviced by existing establishments is problematic. We will find that out as time goes on. We certainly do not want to be anti-competitive.

We need to also remember that this legislation is not the only hoop that a liquor business has to jump through to set up business. The Liquor Control Act is one thing it will have to deal with, but of course it will also have to get approval from the local government authority and possibly the Department of Planning, Lands and Heritage. The Liquor Control Act is one piece of legislation but it is not the only limiting factor when it comes to opening a liquor store.

I now refer to pop-up bars. The last issue I wish to touch on is occasional licences to allow the setting up of temporary pop-up bars that are used to sell liquor to people attending an event such as field days or concerts. Section 59(1)(a) stipulates that an occasional licence can be granted for a period not exceeding three weeks, which I consider to be a considerable period for a temporary licence. My idea of a temporary licence or pop-up bar is something like a field day where wine producers, or whatever the case may be, want to display their product and produce. A wedding has just been mentioned. I visited the Whipper Snapper Distillery in East Perth. I think a couple of other members here have also visited that distillery. I have to take my hat off to those two young men; they have done a really good job. They produce a very high quality product. One of the things they are looking forward to with these amendments is that the definition under section 60(4)(ia) will redefine "wine or beer" to "liquor" so that spirits can also be consumed in tasting a product. There are some good things coming out of that. Allowing pop-up bars to operate past their time frame puts added pressure on existing businesses that sell from liquor establishments. Obviously they are paying rent and other outgoings, and they have overheads and all the costs that go with that. Pop-up bars may operate for extended periods. If a lot of people visit those bars, it unfairly impacts on established businesses. Licences for an event should be one-off, or for a limited duration, in circumstances in which the sale of liquor is not the predominant purpose of the event, which is obviously in the spirit of a pop-up bar. The Australian Hotels Association would like to go a step further and ensure that those licences are awarded based on having a purpose of attracting international, interstate or intrastate overnight tourist visitations while raising the awareness, image or profile of a region; be out of the ordinary; and be unique and not normally available at a permanent licensed premises.

In conclusion, a number of areas within this bill give power for regulations to be drafted. They include prescribing different distances between packaged-liquor outlets in different areas of the state; prescribing the size of a liquor outlet; prescribing different quantities of liquor that can be lawfully carried in excess of prescribed limits for

different areas of the state; and prescribing criteria for licensees when delivering liquor that potentially could be accessed by juveniles. I would like to think that there will be full and proper consultation on all these regulations as they are developed and that those regulations meet community and consumer needs based on business expectations.

Visitors — Enactus Australia

The ACTING PRESIDENT (Hon Robin Chapple): Before we proceed, I would like to acknowledge three young men in the President's gallery tonight: Joseph Gerges, Chris Bebbington and Daniel O'Neill. They are the executive members of Enactus Australia, an international non-profit organisation that brings together students, academics and business leaders who are committed to creating a better world while developing the next generation of entrepreneurial leaders. Welcome to our chamber.

Debate Resumed

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [8.19 pm] — in reply: I thank all members who have contributed to this debate on the Liquor Control Amendment Bill 2018. We are dealing with some very complex and difficult issues. Every comment that has been made has merit. At the end of the day, all these countervailing forces need to be considered and some decisions made. Minister Paul Papalia and his staff have been working with the opposition, the Nationals WA and the crossbenches —

Hon Alison Xamon: And the Greens.

Hon ALANNAH MacTIERNAN: — and the Greens—sorry—to come to a resolution on most of the issues. As was pointed out, a significant part of this legislation will create heads of power. There will be many more negotiations as we populate that with regulations and, of course, many of those will be disallowable instruments. If necessary, we will have the opportunity for further debate on some of those specifics.

On behalf of Minister Papalia, I would like to thank members for the spirit in which they have entered into these discussions. Because so many of the issues raised were raised by multiple members, I will not necessarily provide a response to particular members. I recognise that Hon Tjorn Sibma, Hon Colin Holt, Hon Alison Xamon, Hon Aaron Stonehouse and Hon Rick Mazza all made contributions and, importantly, not just in this house but outside this chamber they have very much participated in the discussions to come to a final landing on this legislation.

One of the issues that has been raised by many members—it is obviously an issue that I am concerned about as well—is the impact of pop-up bars on many of the bricks-and-mortar establishments. We all know that these pop-up events have become popular, particularly in the metropolitan area. Although these events have been embraced as an addition to the hospitality sector to provide that dynamism, vibrancy and vitality that place makers love to talk about, there is no doubt that the extent to which they have grown has become a challenge to those bricks-and-mortar establishments that provide the residual periods with vitality and vibrancy. If they were to become uncommercial and unprofitable, it would have the opposite effect of what we wanted. We might have a period of vibrancy but then a longer period of non-vibrancy. I note that Hon Tjorn Sibma has foreshadowed an amendment to address this issue. The minister said that he believes that this is likely to have unintended consequences because it will affect thousands of occasional licence applications that are lodged each year. In fact, in the last 12 months, over 2 800 applications for occasional licences were lodged. Of those, around 232, or eight per cent, would fall within the large-scale range. The minister understands that this is not the intention of the member's amendment but he is very concerned that that will be the effect. The minister has said that he hopes to be able to offer a compromise to the house to address the concerns of the problematic minority of occasional licences. Of course these concerns have been very strongly put to the government by all members of this house, the Australian Hotels Association, the Small Bar Association, the WA Nightclubs Association and the big end. The minister has assisted the director of Liquor Licensing in developing a new policy in consultation with key stakeholders that will address these issues.

The minister has said—I understand that members opposite are aware of his intention—that a new policy will be developed so that when occasional liquor licences for pop-up events that more than 500 people are expected to attend are granted, applicants will be required to submit a public interest assessment and publicly advertise the application so that members of the community can have their say on the impact. Licensing arrangements for licensed caterers will also fall under this new policy, which will also specify that certain criteria apply to these events. I believe that Hon Alison Xamon also expressed that concern about the licensed caterers. This policy will be finalised within weeks. The minister will certainly be monitoring this situation to ensure that the policy meets the requirements and expectations of the liquor industry and the community. We totally get the point that the member is making; if we undermine the bricks and mortars by a surfeit of pop-ups, we will go backwards. The minister has made the commitment that if the policy does not seem to be working and the industry's concerns have

not been allayed by the policy, he will explore more forceful mechanisms to achieve a similar outcome. To this end, the minister will review the success of the policy with the director in 12 months. During that process he will include consultation with key stakeholders.

The bill also includes a number of amendments to assist bricks-and-mortar licensees. I think these are important. Certainly from my discussion with them, these are the sorts of things that the bricks-and-mortar mob have been looking for. Clause 33 of the bill amends section 61 to remove the requirement for licensees to provide evidence for approval from the relevant local government authorities for extended trading permits to cover events that are taking place in an area that is adjacent to their licensed premises. Through the issue of a long-term extended trading permit, this will allow licensees to more easily activate spaces such as laneways and car parks that are adjacent to their licensed premises in a more spontaneous manner and without the need to apply for a permit for each event. In effect, the bricks-and-mortar people can also be pop-up people, as long as they pop up in their immediate area. In addition, to provide more flexibility under permits issued by a licensee for the purpose of catering, clause 32 of the bill amends section 60(4)(a) to remove the requirement for a caterer's permit to apply to specified premises. This will allow a caterer's permit to be issued on an ongoing basis similar to a licensed caterer; that is, they will be able to set up a temporary bar at functions or events where they have been contracted by the event organiser or another third party. These amendments complement the election commitment of freeing up licensing restrictions for tourism operators, producers and other licensees. Also in this space is a sign of the government's commitment to reducing the regulatory burden for licensees. The maximum period of an ongoing extended trading permit has been increased from five years to 10 years, which reduces the burden on licensees every five years.

Concerns have been raised about the amendments relating to packaged-liquor outlets. There are some 600 liquor stores and around 680 hotel and tavern licensees that are authorised to sell packaged liquor in Western Australia. Of those, 38 packaged-liquor outlets have a floor area greater than 600 square metres, 16 are over 1 000 square metres in size and the largest is 1 480 square metres. The minister reasserts that the intent of these amendments is to minimise the adverse impact that packaged-liquor outlets can have on the community. People would be aware that many communities have expressed grave concern about these large facilities. Although I understand some of the arguments of Hon Aaron Stonehouse, I do not think it is at all correct to say that this is an elitist measure of dictating to people what they can drink or that it is in some sort of way censorious or condescending towards the working class. This is very much about allowing communities that have concerns to raise these issues. I know that there have been many. Hon Laurie Graham has talked about these issues in Geraldton and I think Hon Alison Xamon would be familiar with the issues raised by Lisa Baker, the member for Maylands in the other place. Indeed, I see that the member for Scarborough in the other place has also raised these concerns in her community. We do not accept that this is some sort of elitist positioning against the mob; rather, it provides some capacity for communities that have concerns to be heard on this issue.

There are two parts to the amendment, both of which are intended to prevent further proliferation of outlets by limiting the ability of applicants to obtain a liquor licence when sufficient packaged-liquor outlets already exist. The first applies only to large packaged-liquor outlets. The licensing authority will not be able to hear or determine an application if the proposed premises is larger than the prescribed size, and an existing packaged-liquor outlet that exceeds that is within that. Secondly, there is ability for the licensing authority to refuse the application for a small or medium packaged-liquor premises unless it is satisfied that the local packaged-liquor requirements cannot be reasonably catered for. The minister stresses that this is not a public interest test; however, it will enable the licensing authority to consider whether there has been a reasonable supply. Both these amendments will apply to liquor stores, as well as hotel and tavern licences, but it is important to note that there is not an intention for these provisions to apply to existing liquor outlets. The minister has said that he would also like to clarify that the retail section of a premises is the area where the liquor is displayed for sale. It does not include storage areas or, in the case of a hotel drive-through bottle shop, the driveway unless the liquor is displayed for sale.

Another point that has garnered much attention is the floor size and distance criteria for large packaged-liquor outlets. Although the exact criteria is yet to be determined—again, this will be done in consultation with key stakeholders—the minister has asked that I provide members with an indication of his current thinking. In this regard, it is likely that the floor size will be anywhere from 400 to 600 square metres and the distance is likely to be around five kilometres. The minister has said that the government is likely to consider factors such as population density and distance by road in forming regulations. It is important to emphasise, though, that these numbers may be adjusted through the development of the relevant regulations. Prescribing the size and distance criteria in the regulations will provide the government with the flexibility to adjust the criteria if necessary, and different distances may be prescribed for different areas. The minister wants to clarify that although the intention is that the floor size will be uniform across the state, different distances might be prescribed for the regions. Effectively, a distance may be prescribed for the metropolitan area and another may be prescribed for regional areas. The minister will move to develop those regulations as soon as practical, but he advises that it may take up to six months from the passage of the bill to finalise them.

The minister assures all parties that this will be a highly consultative process with targeted stakeholder groups, including affected companies such as Coles, Woolworths and Cellarbrations and associations such as the Liquor Stores Association of WA and the Australian Hotels Association.

Finally, the minister would like me to clarify that the transitional provisions contained in clause 68 provide that an application that has not been determined by the licensing authority prior to the commencement of the amendment act will be subject to the new provisions.

The carriage limits relate to the sly grogging provisions that have been raised by a number of members. The sly grogging provisions, which are contained in section 109 of the Liquor Control Act, have been in place for some time. However, to achieve a successful prosecution, police must be able to prove that the alleged offender was carrying the liquor for the purpose of sale. This has proved to be extremely difficult apparently and, as a result, the number of successful prosecutions is minimal, even though we know that sly grogging is alive and well, particularly in remote communities. Further, when police have confiscated liquor in such contraventions, unless the case is proven, the confiscated liquor must be returned to the alleged offender. This is very frustrating for the police, who are well aware that this is sly grogging but have been unable to substantiate it to the satisfaction of the courts. This will be addressed by inserting a new provision that will make it an offence for a person to carry liquor above prescribed quantities in prescribed areas. These will be commonly known as the carriage limits. The act will also be amended to create a head of power for regulations to be made to prescribe the area and the quantities of liquor and to give the police additional powers to seize and immediately dispose of liquor from a person contravening the new provisions. These amendments will provide government with another legislative mechanism to particularly address the problem that we see in regional and remote areas.

To facilitate a targeted approach based on police intelligence, the relevant quantities of liquor and areas of the state that will be prescribed are likely to be areas and roads around Aboriginal communities and town sites where liquor restrictions are in place and we know that unscrupulous individuals are exploiting communities. The regulations will be introduced on the advice of the police, as it is generally acknowledged that the police are aware of hotspots for this activity. The provisions allow for lawful carriage of large quantities of liquor such as liquor being delivered to a licensed premises and for other exemptions such as exemptions for tourists. We believe the sorts of scenarios Hon Rick Mazza was expressing concern about can be addressed. The police have some discretion to issue a warning, issue an infringement and prosecute or dispose of any liquor. It is expected that confiscation and disposal will be a significant deterrent to sly groggers as it will have an immediate financial impact on them.

The minister has said that he wants to address the concerns raised with his office by Hon Aaron Stonehouse, who, quite rightly, has expressed concerns regarding the potential for the abuse of police power under these circumstances. We acknowledge that that is a very real issue, as the burden of proof is removed and police are able to more readily search vehicles for alcohol. The member is concerned, on principle, with the rights afforded to police under the circumstances and has strongly urged the minister to monitor and assure a statutory review process examines this amendment to the act within the time stipulated in the bill. The minister acknowledges the member's advocacy on such important matters and assures the house that this subject will be covered by the statutory review process that members note will occur within five years of the Liquor Control Amendment Bill being passed.

Tourism consideration and intervention has been raised by Hon Alison Xamon. To align with the McGowan government's focus on tourism-friendly culture, the bill amends the act to enable a licensing authority to consider the effects a venue might have in relation to tourism, community and cultural matters when determining whether the granting of an application is in the public interest. This will facilitate a more balanced assessment of applications by also enabling the licensing authority to consider the positive aspects of the application. The bill also will allow the chief executive officer of Tourism WA the same ability as the Chief Health Officer and the Commissioner of Police to intervene in proceedings before the licensing authority. In this regard, the executive officer will be permitted to introduce evidence or make representations about the tourism benefits of a particular application. It is expected that the interventions by Tourism WA will be evidence-based and robust and of a high standard like those of the commissioner and the Chief Health Officer.

Issues were raised by Hon Colin Holt on the referral of applications to the State Administrative Tribunal. To assist the Liquor Commission to manage its workload, the amendment to section 25A will allow the commissioner to refer an application for a review of a decision by the director of Liquor Licensing to the State Administrative Tribunal. Referrals will be made only with the agreement of the president of the tribunal, and the hearing of the review will be under the same terms as the commission; that is, no new evidence will be introduced; the tribunal may affirm, vary or quash a decision; the reasons are provided for all decisions; the decision must be in writing with a copy to each party; and it can be subject to appeal.

An issue was raised about the inspection of application documents. The current provisions allow parties to view documents relevant to an application. The amendment to section 16 limits the types of documents that the party to

the proceedings can inspect to documents that the liquor licensing authority proposes to have regard to in making a determination of the proceedings and that are relevant to the party's case. It does not mean that objectors or interveners cannot view documents; it simply restricts access to those documents that are relevant to a party's grounds of objection or intervention. Essentially, documents that are commercially sensitive or confidential for other reasons, for example, contain a lease-space agreement or details of a person's convictions, cannot be viewed.

Quite a number of members raised the matter regarding section 175 of the act in relation to the code of practice. We note that Hon Tjorn Sibma moved an amendment to strike the code from the bill. This amendment originated from the 2013 review of the act, which recommended that the act be amended to enable codes of practice to be developed. By way of background, the current provisions provide that regulations may be made prescribing all matters that are required under the act to be prescribed or are necessary or convenient to be provided for the purpose of the act or for giving effect to the objects of the legislation. These provisions are used to prescribe regulations for all manner of things, including the payment and collection of fees, conditions relating to licences, procedural matters et cetera. The amendment would enable additional matters to be prescribed that are relevant to the effective management and operation of a licensed premises, with the aim of allowing the director to develop a code of practice. These new matters may relate to websites being maintained by licensees, requiring risk assessments, regulating the conduct of juveniles, regulating the training of licensees or regulating the practices of licensees. Currently the director of Liquor Licensing has numerous policies that address these matters, including a policy on harm minimisation that requires applicants to prepare a house management policy, a code of conduct and a management plan. It is expected that the code of practice could address all these issues that are required to deal with the harm minimisation policy and, hence, remove the need for applicants to prepare and lodge them. However, concern has been raised by industry, particularly the Australian Hotels Association, around the development of the code of practice. Although the AHA understands the intent of this provision, it has been pointed out that the director of Liquor Licensing cannot be bound by the minister's decisions; therefore, it would not be possible to limit the operation of the code of practice to the current objectives. Acknowledging this concern, the minister will support the amendment to be moved by Hon Tjorn Sibma and continue the current practices in relation to this.

Hon Colin Holt asked for some further detail on matters likely to be prescribed for the delivery of liquor. Once again, regulations will be developed in consultation with industry stakeholders that are workable and practical. The matters we will be focusing on are those aimed at stopping the supply and sale of liquor to people who are underage and how we might ensure that there needs to be verification of age at the time of delivery.

Hon Alison Xamon sought some clarification regarding the type of licences that would not be subject to the requirement to provide a public interest assessment and submission to support their application. The type of licences that are seen to be low risk include club, club restricted, restaurant, small bar, producer, wholesale and some special facility licences. The regulations will be developed along these lines; however, the director of Liquor Licensing will retain the discretion to request the public interest assessment from applicants for these types of licences when it is considered appropriate and necessary.

Once again, on behalf of Minister Papalia I thank members for the positive spirit in which this matter has been entered into. A lot of these issues are complex. The way forward is not always black and white, but I do think we have a package that is going to be good for the industry, good for developing our tourism product and good for developing an attractive lifestyle for Western Australians, while at the same time taking the opportunity to provide some greater protections for those people, particularly in remote communities, who want to have the ability to control the use of alcohol in their communities. Again, I thank members and commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: I will not introduce new material but will briefly recap the broad flow of the minister's reply speech. I want to indicate our satisfaction with the constructive way in which a number of these complex issues have been dealt with. Once again, I put on the record my esteem and respect for the minister's hardworking staff—without them, we might not be in this position. I am heartened by the minister's agreement to support our amendment to clause 65, which effectively strikes these codes of practices. That is a practical development and I thank the Minister for Racing and Gaming for his open-mindedness on that measure. I still have some residual

concern pertaining to pop-ups and ensuring that we have, as best as we can, a fair, transparent and legitimate licensing regime that does not jeopardise established bricks-and-mortar businesses.

As I mentioned in my contribution to the second reading debate when foreshadowing my intention to move new clause 43A, it was certainly never the intention of the Parliamentary Liberal Party to add additional regulation or complexity to the management of the legislation and certainly not to introduce bottlenecks or hurdles in what can be a time critical decision-making process. It was also certainly not the intention to foreclose the opportunity to obtain an occasional liquor licence for people entering into that application process with good intent, which is probably 98 per cent of all those applicants. Nevertheless, I accept that the inclusion of one word could potentially jeopardise the sound decision-making process at the level of the directorate. I appreciate some of the facts that the minister was able to provide. I am also satisfied that the minister has committed to evaluating the operation of the new occasional licence regimen, noting that the policy is not yet fully endorsed. I think that is sound and reasonable. It has been put very clearly to me that the government is not going to support my amendment as it has been put. However, I understand that the government was this afternoon considering an amendment to that amendment. I just want to get an understanding of whether the minister intends to proceed along those lines. I will quote from an email I received from one of the minister's advisers—I will not name the adviser—which states —

> The proposed wording being suggested for section 75(2)(b) is to delete the first part of the sentence and instead insert new words, "if not required to be advertised is not subject to objection…" The full wording would then be for section 75(2)(b):
>
> *(b) if not required to be advertised is not subject to objection, but may be the subject of a submission or an intervention under section 69;"*

That sounds sensible to me and is consistent with the policy that is being drafted in parallel. My implied assumption, and it was an assumption, was that the minister might move an amendment to that effect, and that is what I am seeking clarification on. I get the impression that that is also the expectation of the Australian Hotels Association.

Hon ALANNAH MacTIERNAN: Yes, thank you for that, member. There might be just a slight variation on what the member read out, but the fundamental thrust of what he said is correct; that is, the minister has agreed that we should introduce a further amendment. I will read it out as it appears on the sheet I have here. We will be deleting section 75(2)(b) and inserting —

> (b) <u>if not required to be advertised</u> is not subject to objection, but may be made the subject of a submission or an intervention under section 69; and

Hon TJORN SIBMA: If it is possible to table a copy of that document, it would be appreciated, but probably a more constructive way ahead would be to seek a commitment from the minister that that amendment will appear on the supplementary notice paper tomorrow; I think that is the way to do it.

Hon ALANNAH MacTIERNAN: I am happy to table it.

[See paper 1487.]

Hon TJORN SIBMA: I thank the minister for tabling that document. My understanding is that tomorrow morning we will receive a revised supplementary notice paper including that amendment.

Hon Alannah MacTiernan: Unless we've finished the bill by then. We might finish the bill.

Hon TJORN SIBMA: The minister may hope for that, and we proceed in optimism, but we also need to be somewhat cautious. The compulsion to move the amendment in the way that I did was to draw attention to the issue, but if I am to continue to negotiate with this government in good faith for the length and breadth of its legislative agenda over the next three years, I want to be reassured that commitments entered into behind the Chair are actually fulfilled.

Hon ALANNAH MacTIERNAN: Absolutely, member. There is no way I would stand up here and say that we are going to introduce an amendment that we are not going to introduce. Please be assured that it is our intention, whether tonight or tomorrow, for that amendment to be introduced.

Hon TJORN SIBMA: I am in a mood of great charity; I will take the minister and the government at their word, and I look forward to seeing that amendment tomorrow.

Hon COLIN HOLT: I thank the minister for the fairly comprehensive reply to the second reading debate, contributed to by most members, and I welcome the government's commitment to this amendment. I know there has been discussion for a long time now around the director's policy on occasional licences. I am looking for an indication of the tabling of an advance draft or some sort of draft. This is not a new issue; it has been around for three to four weeks. Where are we at with tabling an advance draft so that we can have some certainty about what a director's policy might look like?

Hon ALANNAH MacTIERNAN: I understand the point the member makes. Has he received a copy of that draft? I have just been advised; I thought people had been sent a copy of it.

Hon COLIN HOLT: I received a draft from an industry group, but nothing from the minister's office. In the last discussion I had with the minister's office, I was told that the drafting of it was well advanced. I had expectations that we would see the tabling of it in the house to give some certainty to industry about what exactly a director's policy could include. I did not receive anything from the minister's office; all I have is a draft that came from the industry.

Hon ALANNAH MacTIERNAN: I thank the member for drawing that to our attention. Part of the difficulty when developing a document is that there obviously has to be some discussion with the stakeholders in order to develop it but, of course, before it is finalised, it is not finalised. I will seek some advice from the minister. I understand that we have been arguing that the policy will cover and square off a number of the concerns that have been raised. I will want to know from the minister whether it is possible for that to be sent, but I have had some indication from the advisers that they are confident they can send the member a copy of the draft as long as we understand that it is obviously still in draft form. We will forward that draft to members tomorrow.

Hon COLIN HOLT: I thank the minister. That is my expectation, I think, in terms of discussions with the minister's office. I guess we are relying on a director's policy to address the issues that have been raised around occasional licences and the operation of pop-up bars. I understand the complexities and the flexibility required, but this is maybe our only opportunity to influence what the legislation might look like with regard to regulating that part of the industry. We are putting a fair bit of faith into a director's policy. I also understand that a draft is a draft, but a director's policy could be changed tomorrow or next week or the week after, and I would have thought that at some point we would need some greater commitment to what the director's policy will look like with regard to managing occasional licences and pop-up bars, to give the industry some relief in that space, and also a commitment to stick to the director's policy until some future development. At that point, I would have thought there would be a commitment from the minister to say that if there are going to be changes to the director's policy, there will be a statement made in Parliament to indicate what those changes will be. Rather than putting all this stuff in concrete in the legislation, I think the industry is asking for a commitment from the minister that he will have a way of managing this issue on their behalf. A director's policy is the right way to go, but we need an advance draft. I understand there have been a lot of conversations with industry about it, but we need an advance draft tabled in this place to give that indication and some sort of commitment that when it is finalised, the minister will make a statement. If it is to be amended in the future—a director's policy can potentially be changed like that—we need a commitment from the minister to make a statement about that as well.

Hon ALANNAH MacTIERNAN: I certainly understand that. We are happy to table a copy of the draft tomorrow. The minister has given a very clear undertaking that in 12 months' time he will review the policy and that that review will include consultation with key stakeholders; that will definitely happen in 12 months. Obviously, if something looks like it is going a bit pear-shaped beforehand, we would not want this legislation to be read in such a way as to suggest that we could not change it within 12 months. He is saying that, at the end of 12 months, there will be a proper review of that policy, with the opportunity for everyone to participate, but of course that will not preclude the minister or the director from coming forward earlier and making some changes if something has not gone according to plan.

Hon MARTIN ALDRIDGE: Could the minister assist me in making sure that I am aware of where to seek the call on further clauses in the bill? In the second reading speech there are two paragraphs that make reference to the proliferation of large packaged-liquor outlets. The first paragraph starts —

> Expanding on this, the McGowan government is concerned …

The following paragraph refers to the further proliferation of small and medium packaged-liquor stores. Can the minister confirm for me that both those reforms are contained within clause 18 of the bill?

Hon ALANNAH MacTIERNAN: Yes, I can confirm that.

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Section 16 amended —

Hon COLIN HOLT: I have a point of clarification. It appears to me that this is a reversal of the current process for the hearing of proceedings in the commission and is a default from private to public. Maybe I got that wrong.

Hon Alannah MacTiernan: I think you are correct.

Hon COLIN HOLT: It is a reversal of the norm at the moment. It provides for the commission to make the hearing of a proceeding private. Under what circumstances would that occur?

Hon ALANNAH MacTIERNAN: I thank the member for the question. As the member quite rightly notes, currently all hearings are private unless the commission determines that they be heard in public. We are reversing that in the interests of providing transparency. I indicated in my response to the second reading debate that there is an issue with things like criminal convictions. It is necessary for a person who applies for a liquor licence to make a full declaration of their criminal history. Therefore, it is rightly considered not appropriate to have that aired in public. There may also be circumstances in which commercially sensitive information is required to be disclosed and the parties have requested that that be heard in private. It is in cases in which legitimate and sensitive commercial data needs to be considered, and also in cases in which the hearing is about the criminal history of the applicant.

Hon COLIN HOLT: I thank the minister for that. I understand it is about increasing transparency. Who will drive the request to go private—will it be the commission or the applicant?

Hon ALANNAH MacTIERNAN: It could be either. As I have said, it is important to note that if we were to stick with the current provisions, all proceedings would be heard in private unless the commission made a determination that the proceedings be heard in private. This is quite a step forward. It could be at the request of the parties or at the request of the commission, but I think it would mostly be the parties who would make a submission for a private hearing.

Hon ALISON XAMON: I raised a question around this during the second reading debate. I am keen to make sure that I get on the record, to assist for future interpretation, what I hope is the correct interpretation. Clause 8(3) relates to the inspection of documents. Currently, a party can inspect documents to which the licensing authority has regard and make submissions on those documents. Proposed section 16(11)(b)(ii) states that the licensing authority must ensure that each party to proceedings is given a reasonable opportunity to inspect any documents that are relevant to the party's case. I understand that the intention is to ensure that information that should be kept confidential—the minister gave the example of personal details that are not relevant to the case—is not disclosed. However, I would like to get on the record, please, that the intention is definitely not to restrict a party from having the usual access to relevant documents relied on by the other party, and that the party will have the usual opportunity to raise any concerns about the other party's case. Is that interpretation correct?

Hon ALANNAH MacTIERNAN: That is correct. It provides that objectors will be able to review the documents. I am hearing from my advisers that this is about trying to put a bit of clarity around the current practice. The current practice is that if there is commercially sensitive or confidential information, such as the terms of a lease agreement, or details of a person's convictions, that material cannot be viewed. However, the current legislation is a bit ambiguous or a bit grey. This provision seeks to clarify that to bring the practice in line with the law and to provide a reasonable level of protection for people who provide that sort of information.

Clause put and passed.

Clause 9: Section 18AA inserted —

Hon COLIN HOLT: I seek some clarification. Proposed section 18AA is headed "Notice of decision". I think this is also around providing transparency. It states —

> (1) If the licensing authority, when constituted by the Director, makes a decision in relation to an application, the licensing authority must give to each party to proceedings written notice of —
>
> (a) the decision; and
>
> (b) the right of review under section 25.
>
> (2) The notice may, but need not, include the reasons for the decision.

I am wondering under what circumstances it would not include the reasons for the decision. It continues —

> (3) If the notice does not include the reasons for the decision, a party to proceedings may … request the licensing authority to provide the parties with the reasons for the decision.

Why not do that up-front?

Hon ALANNAH MacTIERNAN: I thank the member for the question. It is quite a reasonable concern. The idea here was that in many instances these are very uncontroversial applications. They are very low risk applications, such as for a restaurant licence. It was done in order to get things moving, which is really the objective of many people in this regard, so that we are not bogged down in a lengthy process for every minor application. The idea was that for those cases that have a pretty low risk application, there would not be a need to provide written reasons. However, if someone then decided with one of these that they wanted to nevertheless challenge it, they have the right to seek the written reasons for the decision. It is really just about being a bit more timely and being aware

that most applications will go through without any challenge. It will ensure that we do not bog down the whole system. When something arises and someone wants to challenge it, they have 28 days to seek further reasons. I would say it is very much about improving efficiency and cost effectiveness, and reducing red tape.

Hon COLIN HOLT: I thank the minister for that clarification. Will there be circumstances in which they would automatically be notified of the reasons for the decision? I think the minister said 28 days—is it seven days or 28 days, because I think seven days is in the legislation?

Hon ALANNAH MacTIERNAN: It was previously seven days. During consideration in detail in the other place we agreed to that, notwithstanding our numbers, because there was merit to that argument. That was changed in the other place. When there has been a refusal, obviously there will be reasons given, and when it is a situation of obvious controversy, such as community angst and representations, reasons for the decisions will automatically be given because they are the ones that are more likely to be appealed. No time would be saved by not issuing the reasons for the decision at that point.

Clause put and passed.

Clause 10: Section 22 amended —

Hon COLIN HOLT: Some of these issues were not covered in the explanatory memorandum or the second reading speech, so I want to seek clarification. This is around the rules of the commission. The proposed amendment is —

> Rules of the Commission may be made, by the Commission constituted by the chairperson and 2 other members, …

These are the rules of the Liquor Commission. I can only assume, but the minister's clarification would be good, that these are the rules that the commission makes about governing itself. Could the minister clarify that? The commission can be constituted by the chairperson and two other members—what are the changes? Maybe I have that wrong, but clarification would be good.

Hon ALANNAH MacTIERNAN: The member has read that correctly. Again, it is important to understand there is an unlimited number of members on the commission and many of them work sessionally. When they are not engaged in matters relating to the Liquor Commission, they are engaged in other full-time employment. This is something that has emerged as a real practical problem. It has simply been very difficult to get all the members together as a practical matter to deal with the practices and procedures. This has been a strong recommendation made by the commission in order to try to streamline it. The rules can be amended with the agreement of the chairperson and two other members. All members are part time, including the commissioner. This is something that has emerged out of the practice. It has been very difficult to get the full set of the commission in to keep the system rolling. These are just internal rules; they are not regulations. They are just the operating practices that regulate the commission. As I said, it seems a reasonable proposition.

Clause put and passed.

Clause 11: Section 25 amended —

Hon ALANNAH MacTIERNAN: Some of these amendments are getting very complex. The current provisions of section 25(6)(a) provide —

> a person who lodged an objection to an application, and did not withdraw it, is a party to any proceedings on the application, whether or not the objection was heard;

This contradicts the amended definition of "party to proceedings" in section 3(1)—clause 4 relates to that. It states that "party to proceedings" includes —

> (a) an objector, unless a determination is made under section 74(4) in relation to the objection; and

Under section 74(4), the director can determine not to hear an objection because he has determined that the objection is frivolous or vexatious; or is repetitious of other objections; or relates to matters frequently before the licensing authority of which the licensing authority may be presumed to be aware. Fundamentally, an amendment will be moved to amend section 25(6) so that the amended definition applies in all circumstances. It aligns with section 3(1) so we have the same definition throughout the legislation. Otherwise, section 25(6) would be inconsistent with the section of the amended definition. The bill amends the definition. This seeks to ensure that there is a single consistent definition in the legislation. I move —

> Page 7, after line 19 — To insert —
>
> (2) Delete section 25(6)(a).

Amendment put and passed.

Hon COLIN HOLT: I just want to seek clarification of the amendment—not the amendment on the supplementary notice paper but the amendment in clause 11 of the bill, which amends section 25(2). That section states —

> An application under subsection (1) must be made within a month after the applicant receives …

The amendment deletes "notice of" and substitutes "written reasons for". I am interested in the time frames because of what we discussed earlier about a person applying within 28 days to get written reasons. How does that interact with this section, which deals with a review of a director's decision? Is it just the commission that does that? I would like clarification about time frames with that change of wording.

Hon ALANNAH MacTIERNAN: Because we do not automatically give reasons for decisions now, we need to give people time after they have received those decisions. The amendment that the member raised refers to "written reasons". If we had left "notice of" in the section, we would have had the problem that by the time a person got their written reasons, it would have been too late for them to make an objection. It is simply to bring those two things into alignment.

Hon COLIN HOLT: I thank the minister for that clarification. In reality, a person could wait 28 days to get their written reasons. They will then be given another month to request or apply for a review of the director's decision, if I am reading that provision correctly. That is quite an extended period.

Hon ALANNAH MacTIERNAN: We are talking about more than 2 000 applications a year. The vast majority of them go through without any controversy. The member might argue that this amendment will slightly extend the time, but in the vast majority of cases there will be a time saving. In some instances , that could potentially lengthen the amount of time for controversial cases. We believe that, on balance, there will still be a net gain because many of the applications will go through much quicker.

Hon COLIN HOLT: I am not arguing about the premise of it; I am just trying to seek clarification for people who might be caught up and want to use this part of the act so that they know their time frames for making an application under this proposed subsection; that is all. I appreciate the minister's comments.

Clause, as amended, put and passed.

Clauses 12 to 17 put and passed.

Clause 18: Section 36B inserted —

Hon TJORN SIBMA: I am seeking a number of clarifications about the rationale or the underpinning for proposed section 36B(3), in particular constraints put on the licensing authority as they bear on a number of elements, including —

> The licensing authority must not hear or determine an application to which this section applies if —
>
> (a) packaged liquor premises are situated less than the prescribed distance from the proposed licensed premises; and
>
> (b) the area of the retail section of those packaged liquor premises exceeds the prescribed area; and
>
> (c) the area of the retail section of the proposed licensed premises exceeds the prescribed area.

I think I mentioned this during my second reading contribution. What is the science that underpins these three measures, notwithstanding the fact that they will be dealt with and discharged through regulations? What science, metrics and experiences is the government bringing to bear here?

Hon ALANNAH MacTIERNAN: The minister has made it clear that he is responding to widespread community concern. We cannot pretend that there is any precise science around this. Like many of these areas, there is a variety of views. Quite clearly, there has been widespread community concern in regional Western Australia and in the metropolitan area. The government is looking at the landscape that we find ourselves in and the sorts of circumstances that the community is reacting to. We are also mindful that many local governments have been attempting to enshrine some restrictions within their planning laws and planning policies. The idea was that, working in conjunction with all the stakeholders, we would get a framework that tried to get a balance between these competing interests and the competing aspirations of the community.

Hon TJORN SIBMA: I am not surprised by the minister's answer. Nevertheless, I think it is important that we are embarking on an interesting public policy experiment. I suppose there always has to be a first mover, as with any venture in life. We would hope that the government is somewhat informed in the way that it attempts to do two things: firstly, in the absence of science, set arbitrary limits or prescribed areas; and, secondly—this is my

expression, not the government's—effectively establish exclusion zones for businesses that heretofore have been able to submit applications. In the absence of science, perhaps the minister can advise me whether a measure such as this has been trialled in any other Australian jurisdiction.

Hon ALANNAH MacTIERNAN: There were some provisions made in the Northern Territory, but they were only related to size and they wanted this more complex interaction that we are looking at in terms of size and distance. Sometimes there are things we do that are not guided by precise science, but we have to try to meet legitimate concerns that are emerging at great frequency from the community. The way in which we are doing this is to work out a series of regulations bringing together all of the stakeholders—local government, the big players in the industry as well as industry bodies for the small players—and trying to get a resolution on something that I think that members would all be well aware in their own areas and that has created quite a bit of angst in the community. It is proving very difficult for local government to deal with this. It is creating a lot of conflict between local government and the joint development assessment panel process, so I think it is sensible that we try to resolve this issue and give some way forward without this being the subject of continuous and ever-new disputes between local government, liquor licensing and the packaged-liquor industry.

Hon AARON STONEHOUSE: I have some serious concerns about the efficacy of these measures in clause 18 and the provisions within it. How will the government measure the success of these provisions over the coming months and years? What scope is there then for the government to benchmark the success of these provisions and then adjust floor space limits and prescribed distance limits based on the success or lack thereof of these provisions?

Hon ALANNAH MacTIERNAN: To some extent the test will be the satisfaction of the community at large. Are we still having an enormous number of disputes arising in this area? That is a legitimate test. The statutory review process will assess it and take broad soundings from the community, including from industry. Again, although stakeholders that were involved in establishing the precise boundaries —

The DEPUTY CHAIR (Hon Matthew Swinbourn): Minister, please resume your seat. Noting the time, members, I will report progress to the President.

Progress reported and leave granted to sit again, pursuant to standing orders.