

LIQUOR CONTROL AMENDMENT BILL 2018

Returned

Bill returned from the Council with amendments.

Leave granted for the Council's amendments to be considered in detail forthwith.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Clause 11, page 7, after line 19 — To insert —

(2) Delete section 25(6)(a).

No 2

Clause 19, page 12, after line 26 — To insert —

(d) the status of the licence that applies to the premises (for example, whether the licence is conditionally granted or suspended);

(e) the name of the licensee of the premises.

No 3

Clause 28, page 21, after line 14 — To insert —

(4) In section 55(3) delete “corporate which produces wine or spirits, wine or spirits” and insert:
corporate, liquor

No 4

Clause 32, page 23, after line 25 — To insert —

(ba) in paragraph (e) delete “a Sunday,”;

No 5

New Clause 43A, page 30, after line 22 — To insert —

43A. Section 75 amended

Delete section 75(2)(b) and insert:

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

No 6

Clause 52, page 35, lines 25 to 26 — To delete “a fine of \$10 000, but the minimum penalty is a fine of \$1 000.” and substitute —

a fine of \$10 000.

No7

New Clause 64A, page 42, after line 17 — To insert —

64A. Section 174B inserted

After section 174A insert:

174B. Liquor accords: authorisation for purposes of *Competition and Consumer Act 2010* and *Competition Code*

(1) In this section —

liquor accord has the meaning given in section 64(1b).

(2) For the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the *Competition Code*, the following conduct is authorised by this Act, to the extent that it would otherwise contravene that Act or that Code —

(a) the entry by any person into a liquor accord;

(b) conduct engaged in by any person for the purpose of promoting or giving effect to the terms of a liquor accord.

No 8

Clause 65, page 42, line 27 to page 43, line 13 — To delete the lines.

No 9

New Clause 67, page 43, lines 24 and 25 — To delete the lines and insert —

67. Section 178 amended

In section 178(1) delete “section 95 of the *Liquor Licensing Amendment Act 1998*,” and insert:
the *Liquor Control Amendment Act 2018* section 67,

Mr P. PAPALIA: My adviser is on her way. In advance, I will speak very slowly and advise Hansard that she is Emma Roebuck, who is my policy officer. She is making her way from Dumas House as we speak. I am very comfortable this matter has been brought on. It was done at the request of the shadow minister, and we are happy to respond to the detail of any questions he has. In advance of that, I will say that the whole process, as I understand it—my staff have been there the whole time in the discussions and the debate in the upper house—has been very collaborative, and a lot of hard work has been done by my staff and also Donna Kennedy from the department. Contributions from all members in the upper house have been incredibly positive and supportive, and they have resulted in a range of changes being accepted and conceded. As we indicated, following the debate here, because it is such a broad-ranging amendment to a piece of legislation, and it is about alcohol, there would always be a need to compromise and work on refining the outcome, which we have achieved. I place on the record my thanks to all those who participated in debate, in particular Hon Aaron Stonehouse, MLC, who was very helpful on a range of the amendments. Hon Tjorn Sibma, MLC, made a great contribution, as did Hon Colin Holt from the Nationals. Each of the smaller parties—the Greens and One Nation—also participated very positively, and it has resulted in a good outcome. I will now let the member for South Perth pose his questions.

Mr J.E. McGRATH: The opposition took this bill very seriously. It is good legislation that we thought had to be brought before the Parliament. There are a lot of good outcomes from it. We obviously did not agree on everything, but we did not disagree on much—it was only a couple of things. At the end of the day, we want to get this legislation through today, so that it can progress. We want to get it through today, because the minister is here, and he can explain to us his reaction to some of the amendments made by the upper house. It has been a good process, and that is what Parliament is all about. We have had an opportunity to debate the issue and to put our side of the argument, but at the end of the day the legislation must go through, so let us have a look at these amendments.

Mr P. PAPALIA: Before moving that the first amendment be agreed to, I will say as part of all the collaborative work in the upper house that we have undertaken to work during the winter recess, in a consultative fashion with peak bodies and all interested parties on the regulations associated with implementing the changes. That will take place before the law is formally enacted in the next sitting. I move —

That amendment 1 made by the Council be agreed to.

Mr J.E. McGRATH: Can the minister explain the reasons given in the other place for this amendment?

Mr P. PAPALIA: This amendment was not moved by the other side. It was identified as necessary for consistency through the legislation. It is more of an administrative change that was identified after the bill had moved through this place and was on its way to the other place. The agency identified that it needed to change that particular part of the bill and remove that clause.

Mr J.E. McGrath: Did that relate to clubs?

Mr P. PAPALIA: No.

Mr J.E. McGRATH: For the sake of clarity, what did this amendment relate to?

Mr P. PAPALIA: It is to ensure consistency in the use of definitions around parties to proceedings objecting to an application.

Mr J.E. McGrath: So it is not necessary.

Mr P. PAPALIA: No, it is just to ensure compliance and consistency across legislation. The agency identified that what was being proposed was inconsistent, so it wanted to remove it.

Question put and passed; the Council’s amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 2 made by the Council be agreed to.

Mr J.E. McGRATH: I remember this amendment was raised by the member for Scarborough with respect of the name of the licensee of a premises and giving greater transparency about who owns the licence. Back when I was younger, the name of the licensee would be, say, Harry Brown or whatever his name was, and then there was

a system by which corporations or businesses were buying licences and we would not really know who owned the pub. I think the member for Scarborough was asking for a bit more transparency on that.

Mr P. PAPALIA: Yes, that was raised by the member for Scarborough in this place and I think at the time we said we would investigate whether that was possible and it was, so we are complying.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 3 made by the Council be agreed to.

Mr J.E. McGRATH: This amendment deletes the words “corporate which produces wine or spirits, wine or spirits” and inserts “corporate, liquor”. Could the minister please explain why this is being done?

Mr P. PAPALIA: The intent is to incorporate beer, so all forms of liquor, into the proposed section. The member would remember that during the debate we were talking about the fact that microbreweries and the like were not given the same concessions or opportunities as cellar door operators, wine producers and spirits producers, so this is just to bring everyone into line to remove the limitation of “wine or spirits”, which excluded beer.

Mr J.E. McGRATH: Will this amendment enable producers selling wine or spirits to sell beer? What opportunities would this change provide to them?

Mr P. PAPALIA: The original section of the act states —

Where the licensee is a body corporate which produces wine or spirits, wine or spirits produced by a related body corporate shall be deemed to have been produced by the licensee.

We are just getting rid of the words “which produces wine or spirits, wine or spirits” and replacing them with “liquor”. The proposed section now covers any producer of beer as well. It is just to ensure that breweries are given all the opportunities available to producers of other types of liquor.

Mr J.E. McGRATH: So, it refers to anything produced at that premises, but a winery that has people coming in for a wine tour, still cannot offer beer, or can it? Would that apply if a winery was selling produce from its winery?

Mr P. PAPALIA: No, the amendment is not changing any obligations or restrictions on what the producer can produce. In the past a lot of the opportunities provided to wine producers or distilleries were not available to breweries, for beer, and all the amendment is doing is incorporating all of the liquor producers under the same set of rules and obligations. They still have to produce that product.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 4 made by the Council be agreed to.

Mr J.E. McGRATH: This amendment states —

Clause 32, page 23, after line 25 — To insert:

(ba) in paragraph (e) delete “a Sunday.”;

I am not sure why this is being done.

Mr P. PAPALIA: This relates to places like a small country club such as a golf club or a footy club. In the past they have not been able to host another organisation on a Sunday. It is just a historical artefact, really, and the amendment removes that restriction to enable those places to provide their facilities on a Sunday.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 5 made by the Council be agreed to.

Mr J.E. McGRATH: We just need some clarification about this insertion. Obviously, the minister is agreeing to these amendments, but could he please just explain to the chamber what this amendment entails?

Mr P. PAPALIA: The member will be very happy about this amendment. This is the pop-up response. It is about “temporary bars”. I am happy to table the draft policy that has been prepared for this.

[See paper 1458.]

Mr P. PAPALIA: That is the draft policy for temporary bars or pop-ups. We are viewing as large a facility catering to more than 500 people. For those applications, people will have an opportunity—if the director deems it appropriate to advertise—to object to those types of proposals.

Mr J.E. McGRATH: Thank you, minister; that is good. Where will that advertising take place? What will be the format for the ads so the public is aware that an application has been made to have a pop-up bar?

Mr P. PAPALIA: To be consistent with the current practice for all advertising done by the director, it will be on the website.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 6 made by the Council be agreed to.

Mr J.E. McGRATH: This amendment seeks to delete a fine of \$10 000 but the minimum penalty is a fine of \$1 000. Can the minister explain why the other place wants this amendment and what will be the ramifications? What will the fine be for?

Mr P. PAPALIA: This is in relation to sly grogging. The change to remove the lower-end minimum penalty and have just a fine of \$10 000 was moved by the Greens and accepted by the other place.

Mr J.E. McGRATH: I gather that for any amount of alcohol that someone is sly grogging, the fine will be \$10 000.

Mr P. PAPALIA: It will be up to \$10 000. There will still be latitude for the magistrate to determine a lower fine. Remember that this sly-grogging amendment enables the police to tip the stuff out in front of the offenders. That is probably a bigger penalty than any fine. Having spent the money, time and effort seeking out in all likelihood thousands of dollars' worth of alcohol, they will have it tipped out in front of them and will have wasted all their money and time. I am hoping that will be a greater deterrent than some of the other penalties to be imposed.

Mr J.E. McGRATH: The worry is that a magistrate could impose a fine of \$100 or \$200. We would like to think the fine could be a bit higher than that, given sly grogging is a serious problem in the north. I am surprised the upper house wanted to get rid of the \$1 000 minimum. With this amendment, after the alcohol being tipped out, they can be fined anything up to \$10 000. I know the minister is not opposed to it, but is the minister concerned that the \$1 000 minimum fine is being deleted?

Mr P. PAPALIA: No, member. I know where the members of the other place are coming from. It is not our intention to fill our jails even further with people who are sly grogging. The intention is to impose the penalty of the alcohol being tipped out in front of them and that deterrent being the primary deterrent. I did not want to inadvertently cause another wave of people filling prisons because they cannot pay a fine that is imposed on them. I concede that it is not a bad thing to get rid of the minimum penalty because they might lose \$2 000 worth of grog through being caught. I think that is a pretty good penalty and deterrent. In the event the magistrate deems they have learnt their lesson or are less likely to re-offend through that penalty, I am okay with it.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 7 made by the Council be agreed to.

Mr J.E. McGRATH: Is new clause 64A more an administrative matter?

Mr P. PAPALIA: This amendment is on the State Solicitor's advice that we need to ensure the locations that achieve liquor accord such as in Kalgoorlie—the member may be familiar with it—are not breaching this act, otherwise they could be accused of engaging in cartel-like activity, I am informed. It was legal advice to ensure they can keep doing what they do where all the local people get together with police and have their own accord. It is to ensure they do not breach this act.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 8 made by the Council be agreed to.

Mr J.E. McGRATH: This is the deletion of line 27 in clause 65. What is the purpose of this deletion?

Mr P. PAPALIA: This was part of the amendment that proposed a code of conduct. Some concern was raised about it in this house. Hon Tjorn Sibma, MLC, acting in response to some concerns expressed to him by the Australian Hotels Association moved that that part of the amendment be deleted. We are happy to do that. There were concerns within the constituency of the AHA that somehow it might replicate a move that had taken place in South Australia. Legislative change imposed obligations on hospitality providers in South Australia that they were not supportive of. That was not the intent nor was it likely to happen, but noting their concerns and to make them feel comfortable, Hon Tjorn Sibma proposed this amendment and we accept it.

Mr J.E. McGRATH: Can the minister be a bit more specific about what the AHA's concerns related to?

Mr P. PAPALIA: It relates to a code of practice for any licence applications. The intent was to collate a range of obligations that licence applicants currently have to meet, such as an emergency plan, health and safety plans and

various other rules and obligations they would have to meet independently of each other. The idea was to bundle them up and create a code of practice so that when applicants signed the code of practice the agency knew they were complying and would not have to demonstrate that they were complying with all those bits of code of practice. For its own reasons, the AHA felt concerned that there might be some other intent. There is not, but that aside, we are quite comfortable with removing that entire proposal and allowing the current practice to continue.

Question put and passed; the Council's amendment agreed to.

Mr P. PAPALIA: I move —

That amendment 9 made by the Council be agreed to.

Mr J.E. McGRATH: I can see that the other place was very forensic during its consideration of this bill. Once again, could the minister explain why the lines have been deleted, and also explain the insertion?

Mr P. PAPALIA: This amendment is a consequence of debate in the upper house during which the Liberal Party and Hon Aaron Stonehouse raised concerns about the need for a statutory review of the act. As a consequence, it has been proposed that the act be reviewed within five years. I have no doubt, as has been the case in recent times anyway, that the legislation would be reviewed before then regardless but we were very happy to accommodate the request for it to be part of the legislation. That request came from both the member for South Perth, and Hon Aaron Stonehouse in the upper house. We want to thank both members for suggesting the proposal.

Mr J.E. McGRATH: I agree with the minister. The act will obviously be reviewed many times because the liquor industry is always changing, along with entertainment, tourism and things like that. Five-year reviews are fairly common in acts of Parliament. We obviously support the amendment.

Mr P. PAPALIA: Also, I reiterate that Hon Aaron Stonehouse contributed very positively and professionally to this amendment. The advisers worked closely with him and the Liberal Party in the other place. That work has resulted in a better outcome, and that is a good thing. That is how it should work. Alcohol is a challenging environment. Passing legislation will always be complex and it will always end up in compromises of different descriptions, and in this case a lot of collaboration. I would like to again thank everyone in the other place for their support over the last little while and also the member for South Perth and the opposition in this place.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.