LIQUOR CONTROL AMENDMENT BILL 2018

Second Reading

Resumed from 12 April.

HON TJORN SIBMA (North Metropolitan) [2.48 pm]: I am the lead speaker for the opposition on this government bill. The opposition supports the Liquor Control Amendment Bill 2018. Nevertheless, there are issues of concern that I will raise and questions will be put to the minister representing the Minister for Racing and Gaming. Members will note two amendments standing in my name on supplementary notice paper 58, issue 5 of today's date. I think the supplementary notice paper was updated to include additional amendments moved by the government.

I do not want to unduly delay the passage of the Liquor Control Amendment Bill 2018, nevertheless, it is a comprehensive document that makes in some instances sweeping changes. It pursues broad themes, some of which are a little inconsistent with one another. I will use this opportunity to draw members' attention to some of those inconsistencies. In the main, as identified in the explanatory memorandum, this bill tries to address three broad themes. First and foremost, it appears that this bill attempts to facilitate a more tourism-friendly hospitality culture. It seeks to implement strategies to reduce harm, and also purports to remove regulatory burdens and improve the administration of the act—all laudable aspirations. Whether they move from being platitudinous to practical and implementable depends very much on the skill and consultation of the regulators at the point of which this bill becomes an act.

The bill seeks to discharge those three broad themes via six broad measures that I will list. Forgive me my—I will not say glacial pace—gentle canter through this bill, because I think the bill is detailed enough to warrant this kind of treatment. The first is a proposed amendment to section 38(4) of the act. The explanatory memorandum states that the amendment will —

> … allow the licensing authority to consider tourism, community and cultural matters when determining whether the grant of an application is in the public interest …

On the face of it, that is a laudable aspiration that I will return to later.

A similar amendment is to provide the power to execute the abovementioned amendment. It will —

> … enable the Chief Executive Officer of Tourism WA to intervene into matters before the licensing authority in relation to the tourism benefits of an application.

I doubt that there is a member of this chamber who is not aware of the pre-eminence and almost supervening authority of the professional opinions put forward by either the Commissioner of Police or the representative of the Department of Health as they concern the acceptability of the grant of a liquor licence. That current regimen has been the source of many complaints over a number of years. It is pleasing that the government is moving in this direction. In the main, I think the industry welcomes that move.

However, other proposed amendments to this bill might give us some reason to pause and reflect on their appropriateness, and indeed the capacity to implement without causing unforeseen challenges in a way that does not actually work counter to the intent of the bill. I speak there of the insertion of proposed new section 36B, which will enable the licensing authority to manage the number of liquor outlets in that a judgement call will be made that there are sufficient outlets already existing within a certain vicinity. Additional amendments of a similar theme appear in the bill that concern the market entry of new—again, this is a value judgement—large packaged liquor outlets in close proximity to a pre-existing large packaged liquor outlet. This is colloquially referred to as the "Dan Murphy's clause". I use this opportunity to draw members' attention to the attempt made by the Northern Territory Chief Minister to enact a similar barrier to market entry last year. The utter impracticality of that led to the Chief Minister committing to amend the legislation he had moved; that was an admission that the Northern Territory had got that wrong. I think that is worth bearing in mind. As much as I am a parochial Western Australian, we in this jurisdiction are not the font of all wisdom. It is sometimes instructive to look at what our counterparts in other Australian jurisdictions attempt to do in areas of public policy, and learn from their mistakes when we can. I am not satisfied that sufficient attention has been paid to that, and I would not be surprised if in the course of passing this bill and implementing measures to that effect, we do not end up in the situation in which the Northern Territory finds itself at the moment. I will return to that issue in my address.

I will continue with observations on other proposed amendments. A significant one is an amendment to the secondary objects of the act under section 5(2) to encourage responsible attitudes and practices in the promotion, sale, supply and consumption of alcohol. That includes provisions regarding compliance and enforcement, the introduction of "carriage limits", and the prescription of criteria for licensees when delivering liquor.

This bill also seeks to establish a separate licence category for small bars. I think this amendment is probably universally supported by all members of this house; I would be surprised if that was not the case. It has the practical effect of allowing restaurants to sell a glass of wine without having to serve a meal. I attempt, as best I can, to adopt a pragmatic and principled approach to legislation, notwithstanding our partisan differences. But I think we can all be unified in our support of, and our acclaim for, this amendment. Through consultation I have had with just about every stakeholder in this sector, that change is welcomed by the industry. So, well done.

In a similar vein, there will be the removal of the need for clubs to have the director of Liquor Licensing approve their constitution or rules. Without being pejorative or reflecting on the experience and wisdom of older members of this chamber, I find it an anachronistic curiosity that the director presently has that power. Whatever justification granted that power at the outset has probably eroded with the passage of time. I understand that clubs throughout Western Australia look forward to that change very much.

I now move to some of the interesting and potentially debatable claims or amendments that seek to increase vibrancy. I make the observation that I do not understand why vibrancy always seems to be synonymous with deregulation in the field of liquor. I think they can co-exist but they are separate and distinct measures. Any government, be it a conservative government, a Labor government —

Hon Alison Xamon: Or a Green.

Hon TJORN SIBMA: One might dream, honourable member, of the time when the Greens have control of the Treasury bench.

Be that as it may, it seems odd when bureaucracies speak of a need for vibrancy, much like I find it odd when bureaucrats speak of the need for innovation. These are words that do not fit easily into the mouths of official people. Nevertheless, there is an intent to activate our city and our state to make it vibrant. One of the ways that the minister sees fit to do that through this bill is to introduce measures to make it easier for established hospitality venues to participate in micro festivals or pop-ups and the like. How could we look at that and say that is objectionable? It is not. There is a flip side to that, which I will address, which is to deal with pop-ups in the main. They are very popular but not every pop-up is the same as another and some—indeed, a few notable ones—have verged on being semipermanent decampments operating under a different regulatory framework, if I can put it that way, which I think has caused some justifiable anxiety and upset on behalf of established proprietors, particularly those in Northbridge. I will get to that matter later.

There is also the broad aspiration that this bill seeks to streamline processes and reduce regulatory burden. Again, how could one possibly object to that as an aspiration? It does not apply just to this bill; it should apply to all government bills. However, when we read that in explanatory memoranda or we read or hear that phrase in second reading speeches, we should ask ourselves, "Really?" I have found that the motivation to streamline regulation ought to ease administrative pressures. It does so from the perspective of the regulator, not necessarily always that of the user. I think there are instances within this bill in which the government can rightly claim that regulations are being reduced in a sensible way and administration is being streamlined in a sensible way. In other parts, we have what could amount to the creation or establishment of another regulatory framework within a framework. That has to deal with the proposition that existing licensees have to develop risk management plans under the auspices of this bill. I think that is an unnecessary burden and unjustifiable. I have foreshadowed an amendment that would strike that from the bill. I will get to those amendments later.

Forgive me that lengthy preamble but I thought it was necessary to give some respect to the scope and scale of the amendments being proposed within this bill.

Hon Peter Collier: I thought it was outstanding.

Hon TJORN SIBMA: It is a relative phrase; I am but learning. I will make the observation though that I think this bill is overly ambitious in its scope. At times it is unclear precisely which of those three broad ambitions it seeks to achieve. I think it can achieve two out of three but not all three at the same time. As I have mentioned, I think there are some inherent contradictions in pursuing "vibrancy", arguably in a way that affects existing businesses while also advocating effectively for the creation of new market entry barriers, which will mean that any new packaged liquor retailer of scale is unlikely to be able to establish and operate new premises, at least in the metropolitan area, for the foreseeable future.

I certainly do not see the creation of more regulation to address an unspecified ill or a collection of perceived problems as being a significant advancement in public policy, something that actually improves the operation of the existing bill, does much for public health or public safety concerns or does much to encourage the investment in this state that the government, as it should, otherwise go out of its way to attract.

Before I proceed much further, I want to reiterate that the opposition supports the bill. It is clear that some work still needs to be done to improve it. Might I just say how much I appreciate the endeavour of the minister's staff

in their consultation and their focus on attempting to head off or buff out some of the rough edges that presently exist. I think they do their minister credit and they do the government some credit. This is not necessarily an easy bill. I commend them for their effort. I also commend the minister representing the minister in this place if only for one aspect of her explanatory memorandum when she committed the government to entertaining constructive amendments or improvements. I forget the precise form of words but it was a very constructive, proactive, helpful overture. It was given in good faith but it came at some contrast to the bellicose take-it-or-leave-it ultimatum that the minister in the other place was previously entertaining. I find that kind of carry-on juvenile, ridiculous and completely unnecessary. I am glad that his representative in this place—a person of more capability, intellect and understanding—has sought to improve —

Hon Alannah MacTiernan: The minister in the other place is very keen to engage with you all.

Hon TJORN SIBMA: Many thanks. I am sure the minister will never undertake another practice of interjecting on me when I am besieging her with such compliments!

Hon Alannah MacTiernan: You need to understand that Minister Papalia is keen to have the dialogue and have constructive reflection.

Hon TJORN SIBMA: That is quite encouraging news. I think we can all take some comfort in that.

I want to move forward in that spirit. I understand that probably the majority of operators in the various subsectors comprising the liquor and hospitality market look forward to the passage of this Liquor Control Amendment Bill. However, I think some hold legitimate concerns, which we will attempt to address, but the majority of participants look forward to it. With that in mind, the Liberal Party is adopting a practical and principled approach to the evaluation of this bill. We will not go out of our way to make the best the enemy of the good. I genuinely think aspects of this bill can be improved. The implications of certain new sections need to be clarified but, in this instance, the Liberal Party will not detain this house by attempting to save the world clause by clause. A consistent message that I think has been put to the Liberal Party by all stakeholders is that, with this bill, they want clarity, predictability and, as far as possible, a genuinely level playing field. However, that will always be a challenge in any field of human or economic activity.

I want to address what I referred to earlier as the Dan Murphy's provisions. In the first briefing on the bill I took, I sought to understand the justification for the amendments that would effectively establish floor space limits, and exclusion zones for new large packaged alcohol retailers. I was attempting to understand whether it is a public health measure, something to do with small business policy or a means by which the government could intervene in the market place. I walked away from the first meeting none the wiser about the government's intentions or motivations on this issue. If I made the assumption that it was a public health or public safety motivation and asked for at least some correlating data to demonstrate a higher than usual or statistically significant incidence in arrests, public nuisances, domestic violence or traffic infringements in the vicinity of existing large packaged liquor retailers, I was told there was information but that it would be difficult to assemble. The government still has not provided that justification.

Despite claims to the contrary by public health advocates, there is no consistent data that upholds the proposition that the mere presence of a large packaged liquor outlet leads necessarily to higher than usual social dysfunction. I think that line of inquiry was put in the other place and, effectively, the minister said that it was a bit of both—a bit of public health and a bit of protecting small to medium-sized businesses. That might be the case. The motivation is probably there on both scores but whether this is the means by which we should uphold public health and safety or improve the profitability and viability of small to medium-sized enterprises is a different discussion.

In the other place, the Liberal Party consistently recorded its concerns about the Dan Murphy's provisions. I do not need to go over the philosophical basis of those arguments. Instead, I will use this opportunity to add some additional observations for why I think these Dan Murphy's provisions are a bad idea. First of all, it is a very blunt instrument; it will create additional regulation. The regulations are still undefined and they seem to be arbitrarily set around 400 square metres of floor space and pockets of isolation of a radius of five kilometres. To me there is no science to justify this. I understand these provisions are still to be worked through as the regulations are drafted. But this appears to be the consensus starting point for negotiating those regulations. That may have changed, but it appears to be the starting point. I would like to understand why. What is the difference between an outlet that has a floor space of 400 square metres versus one that has 390 square metres? What particular public safety or small business benefit is obtained by not allowing new entrants to set up shop within a five-kilometre radius versus a six-kilometre radius? I understand we need to start somewhere but, to me, the justification for this kind of intervention does not appear to be scientifically based or economically valid. I seek also to understand why very prescriptive provisions such as this are necessary, given the powers local governments have under their own town planning schemes to approve development applications for the construction and operation of new liquor retail outlets. I get a sense that we are attempting to duplicate existing powers.

Hon Alannah MacTiernan: Do you think local government has been able to do that?

Hon TJORN SIBMA: Why does the government think it will be more effective at doing this? Does it work? I seek to understand where the limits are for local government to make orderly decisions under the town planning schemes.

I have mentioned the Northern Territory example. If we need a contemporary, cautionary tale about the wisdom of establishing these kinds of barriers to market entry, that is it. I would like to understand how what is proposed in this bill differs from that of the Northern Territory. I know that it differs in—I will not say a superficial aspect—a substantial or temporal aspect in that Dan Murphy's did not exist in the Northern Territory when it passed that legislation. Nevertheless, we are attempting to erect barriers to market entry at a micro scale. The theme, thrust, substance and motivation are still the same. How likely is it that this government will not seek to re-evaluate its position after it drafts its regulations and they are enacted and they operate for a certain period?

That is not an exhaustive list of reasons why we find this Dan Murphy's proposition troubling. They are effectively just additions to observations already made. I do not necessarily agree that, as a consequence, customer choice will be completely limited by this proposition; nevertheless, it is likely that consumer choice will be limited to some degree, but maybe not to the large degree feared by others. I also understand and am very sympathetic to the concerns of independent liquor stores. I understand, am sympathetic to and appreciate their motivation to ensure that their own business survives. I completely understand that. These people are the heart and soul of Western Australia's small business community. It is clear to me that larger operators such as Dan Murphy's operate the sort of business model that places those businesses under some pressure. However—I think this is an important point—what some would deem to be the saturation or density of these large packaged liquor retailers is not unusual. It is not germane or peculiar to alcohol. It is known by another term and that term is clustering. There is an economic theory that seeks to explain why clusters of competitors within a certain industry set up in close proximity to one another. We see it everywhere. We see it the length and breadth of Perth. We see it the length and breadth of the state. It is in the fast food industry, whether it is McDonald's setting up next to Red Rooster setting up next to Nando's setting up next to Domino's Pizza, or in the service station market or car dealerships or, as Hon Aaron Stonehouse has pointed out, with business parks and precincts, which are normally encouraged by local or state governments. So it is with liquor stores. Why is this so? Firstly, it allows individual enterprises easier entry into the marketplace. They benefit from the economies of scale established by pre-existing enterprises. They get to benefit from the same shared market base. Effectively, the market research is done for them to the point at which these businesses get to keep trading only because there is obviously a willing market.

Hon Alannah MacTiernan: Can you give us some examples of when a Dan Murphy's has set up and that has seen the fluorescence of small liquor stores?

Hon TJORN SIBMA: I will lead into this. Forgive me my long run-up, but I will get to this.

This phenomenon is prevalent and most marked with commoditised, substitutable goods and services. I cannot think of a more commoditised or substitutable good than liquor. It is not always the case, but largely it is true. Clustering behaviour is not new. It has a long historical background. It can been seen in the banks in the City of London. It can be seen in Silicon Valley. It can be seen in Hollywood. This is rational economic behaviour. I say to members that clustering is the norm, not the exception. It is a convenience to businesses and customers that these businesses set up in close proximity to one another. But these benefits are not always equally shared and are probably easier to justify at the macro scale. There is nothing necessarily pretty or beautiful about competition at the individual level, the personal level or the enterprise level. Competition tends to work against individuals, but the benefits accrue over time to larger groups of people. Competition is ugly, it is hostile and there are losers; that is true. Sometimes it looks fair only from a distance or for the people of the organisations that triumph through that competition. Much like the rest of life, competitive advantages for businesses are unequally distributed. Some businesses possess a business model that allows them to provide better customer value and, in the end, that is all a business is judged upon. That kind of strategic competitive advantage, however, is never fixed permanently in time or in space. The market is dynamic.

The question that was put was: do these individual independent liquor retailers benefit from the proximity of a Dan Murphy's store? I think the answer to that is probably not. In fact, I commend a number of individual proprietors who took me enough into their confidence to show me some of their yearly profit and loss statements going back four or five years. There was a consistent theme. Some of these businesses had lost up to 20 per cent of revenue since a Dan Murphy's store had operated or set up shop within close proximity. That correlates; it is probably true. Is it entirely true for that reason? I am not sure. What I want to establish, however, is that market operations are dynamic and complex. Anyone who purports to be able to intervene in a centralised way to the operation of that market is generally kidding themselves. If they do that, it will cause a range of consequences that go beyond the bill's intent, which is to stop a new Dan Murphy's moving into the metropolitan area. I do not necessarily think that that is a supreme public policy aim. It creates a disincentive for other businesses in different

sectors to invest in this state. But I will say that my argument is probably no comfort to independent liquor retailers—it is not. I have told them that I disagree with the provision and the Liberal Party disagrees with the provision in this bill. However, we are not moving to oppose the bill. We are sympathetic to the plight of small to medium enterprises, including independent liquor stores. It has, however, caused me to think about what we might do to support them. I have put to them that this provision is not really the panacea that they want or need. I do not want the next piece of my contribution to deteriorate into, "You should have done this before when you were in government" and that kind of thing. We know the challenges facing small to medium enterprises in this state—payroll tax, land tax, penalty rates and a slew of regulatory burdens and administrative overheads. It is only when we address these restrictions that we can actually do something about supporting them, growing them and ensuring their viability. I put it to members that the mere act of preventing a new Dan Murphy's setting up, for example, in Maylands or anywhere else in the metropolitan area that they would care to name, is not going to save any—not one—independent liquor store. It just will not work.

The real needs of independent liquor stores will not be addressed by this bill. I understand why the government finds the Dan Murphy's model to be—this is quoting people who have made these observations to me; they are not my words—cannibalistic, predatory and damaging. Aspects of that might be able to be upheld. If that were truly the case, I do not think the government should seek to put its cloak around small business by drafting regulations to inhibit the operations of a competitor. If it were truly misuse of market power that the government is concerned about, it should deal with this in the appropriate way under the Corporations Act. It could write to the Australian Competition and Consumer Commission and have it undertake a review. I am open-minded about whether a case can be upheld, and it would be a case upheld principally against Woolworths as the majority shareholder of Dan Murphy's. If it is engaging in this kind of behaviour, deal with it through the appropriate mechanism.

Hon Alannah MacTiernan: Did the member read Fels' report into the effects test and the problems with the federal consumer legislation, the Trade Practices Act as it now stands, to deal with this sort of stuff? Is the member familiar with that whole debate about the need to have an effects test?

Hon TJORN SIBMA: In the broad, yes, but is there an observation the minister wants to make in this particular instance?

Hon Alannah MacTiernan: I perhaps might suggest that taking action with the ACCC might not be terribly forthcoming, even if there were a mischief to be dealt with. Because of the way the Trade Practices Act is structured and because it has to be intent rather than effect, the ACCC is really not going to be able to deal with the sorts of issues that we are attempting to deal with here.

Hon TJORN SIBMA: I am glad the minister raised this point because I think it is a constructive contribution to the discussion of this bill. What I would like to see addressed in further debate is whether the state government has considered other avenues in ensuring the viability of an independent liquor store sector aside from the proposed amendments to the act, which I tell her will not work; they will not save a single business. I would seek some clarification about whether legal advice has been sought, whether through the State Solicitor's Office or some other independent counsel, by the government that seeks to address the contestability or the claims or the liabilities that may be levelled against the state government from a commercial operator for establishing what is an arbitrary and artificial barrier to entry. These are significant commercial issues that need to be thought about. I will, however, move on, with the pleasure no doubt of the house, to explain —

Hon Jim Chown interjected.

Hon TJORN SIBMA: Thank you very much.

I mentioned to the Leader of the House—oh, she is there!—that I attempt, when I am so motivated, to be the embodiment of sweet reasonableness.

Hon Sue Ellery: I have always thought that!

Hon TJORN SIBMA: I cannot believe, considering the tone and tenor of debate earlier this morning, that we are now in a détente situation—a rapprochement has been made. Maybe it is the end of the week!

I want to address two substantive issues. I am prepared to be open-minded about this. I want to explain to the house the two amendments I have on the supplementary notice paper in my name and why I will move them. I will invite, no doubt, the minister to explain the effect of the government's sixth amendment on the supplementary notice paper. I look forward to that. I draw members' attention to my intent to move what is effectively new clause 43A, an amendment to section 75 of the act, which is to delete the current section and insert the words "is subject to objection, and may be made the subject of a submission or an intervention under section 69". I have kind of dissected away from the context of the bill, which sounds quite odd, but I will explain what this is to do with. Earlier in my opening remarks, I talked about the concerns held by established licensees about the operations of

pop-ups. Their concern is that the present regime, as it relates to the granting of occasional liquor licences, has, in the majority of cases, but certainly not in all, and in certain significant ways, been taken advantage of and been abused. I will not call it necessarily a loophole, but the provisions of the granting of that licence have been exploited in a way that probably was not ever envisioned before the great economic boom gave us things like vibrancy, foodie culture, pop-ups and hipsters and all the rest.

All this amendment would do —

The DEPUTY PRESIDENT: Order! Hon Jim Chown knows not to pass between the member speaking and the Chair. I am sure it was an oversight on his part.

Hon TJORN SIBMA: You are nothing if not even-handed in your rulings, Mr Deputy President. We are all the better for your wisdom, experience and even-handed judgement.

The DEPUTY PRESIDENT: Unquestionably.

Hon TJORN SIBMA: I am doing too much to pump people up today.

There have been occasions when largely east coast–based proprietors have exploited the way in which occasional licences are granted by the licensing authority to operate events that are not pop-ups but are semipermanent fixtures that operate at scale and, being judgemental, whose reason for being is really not related to their commercial reason for being. They find a cultural or vibrancy justification for their existence, but they are in the business of pumping people full of liquor. They are problematic because the proprietors do not have to abide by the same regulatory regime that established proprietors have to abide by, and their impact on public disorder and public safety is potentially deleterious. Young people, many under age and full of liquor, are disgorged from these festivals and become a public nuisance. While it is claimed by pop-up providers that they are doing established premises a service by attracting all these young bouncy things to their festivals at scale—we are talking about events involving more than 500 people —

Hon Alannah MacTiernan: Doesn't that fit within your cluster theory that you were talking about?

Hon TJORN SIBMA: Not necessarily. There are always exceptions to the rule, minister. The justification is that these people come out and are great for businesses. Well, they are not if they have been drinking for seven hours straight and cannot stand up. No licensed premises can let such a person in—it just does not happen that way. The proprietors of these established premises have been very even-handed. There is certainly no intent to compromise vibrancy that is extant in this jurisdiction or the vibrancy that is aspired to in this bill, but they do seek something that approximates a level playing field and is effectively competition or regulatory-neutral in its operation and effect. I must give the minister, the minister's staff and the people who work for the director of Liquor Licensing some credit for being aware of this issue and for attempting to work constructively not only with members represented by the Australian Hotels Association and the big-end network to try to put in place some policy guidance that might tighten up the way in which occasional licences are granted. There is a very sensible ex-minister in this space who is in the house, who guided me about not being overly prescriptive in legislation. We do not want to tighten up the operation of pop-ups to the degree that a Country Women's Association or P&C could not run an event or individual distillers could not operate because the legislation was too prescriptive and too onerous and tended towards overcorrection. Prior to coming in here, for my sins I spent some time in the bureaucracy and in the service of executive government, so I understand that making any change is difficult, that you cannot satisfy everyone, and that good policy actually takes time to develop sensibly before it gets to a point at which it can be implemented, and it is only after the implementation that its positives or negatives are encountered. I applaud both the director of Liquor Licensing and the minister and their respective staff for working on some policy guidance to tighten up how these licences are granted in an attempt to avoid some of the unintended consequences of the more explosive and exploitative larger-scale pop-ups but in a way that does not encroach on social or civic life or get in the way of anyone having fun. That process is taking a long time.

It is with some concern that the proprietors, owners or operators of established premises think that they will not be given sufficient cover by this bill, notwithstanding the work that is going on behind the scenes. I want to at least provide a recourse to them to lodge an objection to the grant of an occasional licence when they think that that is the right thing to do. I should add that it has been conveyed to me that the government will not support that amendment. I understand that position. I will ask the minister representing the Minister for Racing and Gaming to advise on the progress of the development of that director's policy—I think that is the correct terminology—and what the unintended consequences might be of accepting the amendment as I have put it. The intention is certainly not to add to the cost or complexity of the work of the director of Liquor Licensing or to consume resources in a way that is completely unintended. However, if the government will not accept the proposition that someone should be able to lodge an objection to the grant of one of these licences, I want to know what is actually meant by having the grant of these licences made the subject of a submission for an intervention under section 69, which is the current power, and how many times over the last two years an application for the grant of an occasional

licence has been made the subject of a submission or an intervention under section 69 of the act. Until I am of the view that I have been provided with a sensible justification that what I am proposing is costly, unnecessary or burdensome, I am going to leave it in, because I am not confident that the balance has been struck to permit vibrancy in pop-ups with cultural justification or a range of other meaningful justifications when there is no other recourse. I am happy to answer questions on that later. But I should add in the time available, which is flexible, elastic and fluid, my concern about proposed amended section 175 of the act. Forgive me as I seek to remind myself and obtain my confidential notes that will explain my concern in a more informed way. This goes to my earlier generic, universal observation that I get the shivers when I read about any government or any official making a claim that they are seeking to streamline regulations or improve the administration of an act. They will improve the administration of the act for whom, for what purpose and at what cost?

Hon Colin Holt: The people of Western Australia obviously!

Hon TJORN SIBMA: They are foremost.

I am concerned about proposed amended section 175(1)(h) as currently drafted. It will allow the creation of new regulations related to advertising, the conduct of managers, risk assessments of operating practices, the conduct of juveniles, training and licensee practices and the like. What I find particularly curious is the new requirement for the creation by existing licensees of risk assessment plans. The government cannot on the one hand say that a bill will streamline the administration and attempt to declutter regulations to make them more workable and usable and create vibrancy, and then, on the other, slip in a new requirement for existing licensees to develop risk assessment plans. It is unclear what this plan should look like, who will bear the cost, what the improvement to the operation of the business or public safety that having such a plan will yield, whether there will be any compulsion to act in accordance with the risk management plan, who will validate the plan, and, when all is said and done, who will police the compliance with that plan after someone has already been granted a licence to operate and is obliged to act in accordance with all those obligations. That is a small but concerning example of regulatory overreach, and of a disturbing, creeping regulatory impulse that all regulators have. It is the kind of thing we oppose philosophically and also for practical purposes. My major problem with that is that proposed amended section 175(1)(h) may create a whole new regulatory framework within a framework. That does not make sense. I do not think it was necessarily intended by the minister. I am somewhat encouraged by a message relayed to me by the minister's staff this morning that they would support the deletion of new paragraph (h). I had also sought to strike out the subsequent paragraphs—(i), (j) and (k)—but I will leave those as they are. I seek clarification on why they exist, and what will be obtained through their retention. I was also left with the impression—perhaps my interpretation or recollection is faulty; sometimes it is—that the government will support the deletion of new paragraph (h). I got the impression that it was going to move an amendment to that effect. As it stands, I do not see that reflected on the supplementary notice paper. That may have been a timing issue. The government might be considering some other amendments; and, if so, good. I will now dispense with my introductory remarks and get to the main body of the speech. I will recap.

The intent here is not, as I said, to make the best of the enemy of the good. This legislation of more than 300 pages will, in effect, create a series of heads of powers for the creation of new regulatory instruments and new regulations, and should be considered by this chamber with some trepidation. I would like to get a sense from the government of how long the process of drafting these regulations is likely to take, and with whom and when will it consult concerning the development of those regulations. This is key. We enter into this not completely blindfolded, but maybe with our vision partially obscured. My observation is that a bill like this that deals with regulatory frameworks is comprehended only by people at the working level within the departments. A bill like this is weighted to the advantage of the regulators who drafted it. There is no conceivable minister—even one gifted with the power of omniscience, faultlessness and the endless capacity to absorb and retain knowledge—who could possibly begin to comprehend how a bill that creates regulations being mooted like this will actually operate in effect. The only people who know this are the regulators. They have the whip hand. That is dangerous, but it is what it is. That is why the opposition has adopted a principled and pragmatic position on this bill. There are potential problems that we cannot know. I will not invoke Donald Rumsfeld, but certainly in a bill like this that creates a series of new regulations there are known knowns, known unknowns and unknown unknowns. The unknown unknowns are the things that we cannot, to the best of our intentions, pre-empt or understand. We will find that out only after this bill passes, after the regulations are drafted and after they have been given some time to take effect.

With those reservations put on the record and with, I hope, some explanation given for the reasons the Liberal Party is seeking to move the amendments that it will, I look forward to subsequent contributions to this debate.

HON COLIN HOLT (South West) [4.00 pm]: In following Hon Tjorn Sibma, I will try not to cover the same ground that he did; I would rather raise some of the issues that I feel are important.

I am the lead speaker, Mr Deputy President. I see that I have been allocated only 45 minutes. I think the leaders of the parties get unlimited time. It does not matter. I will not take 45 minutes, unless we want to argue this point.

The Liquor Control Amendment Bill 2018 is one of those bills and one of those policy areas that is really complex.

The DEPUTY PRESIDENT: Member, I do not know whether you want me to respond.

Hon COLIN HOLT: I figured it out myself, Mr Deputy President.

The DEPUTY PRESIDENT: Possibly, but possibly not. The leader of your party has unlimited time, though we do not encourage her to use it always. The lead speaker who is not the leader of the party may have unlimited time if they are designated by the leader. If you have a designation, you can do that. Just by way of clarification, I note that I have not used up any of your limited time in giving that clarification. I had the sense that you were looking for it.

Hon COLIN HOLT: Indeed, I have got permission. I am not the Leader of the Nationals WA in this place. She is away on urgent parliamentary business, so I am unable to confirm that. I will not take up unlimited time—I am not sure we can do that! We have sat in this place for seven or so hours when we had unlimited time.

Where was I? I think I was talking about policy positions. Searching for policy outcomes in this area is quite difficult. They are usually reflected in legislation, which in itself has a long lead time to get to this house. We are not nimble enough in this policy area to have everything written in stone in legislation. There is a degree of trust in subsidiary legislation and, in fact, in this area, for some of the director general's policy positions. During part of this debate, I will be looking for some guarantees and some statements to be put on the record that reflect some of the issues that have been raised firstly by Hon Tjorn Sibma, me and other contributors to this debate. I suspect that we will need to do that in the committee stage, given the complexities and also the subtleties of amendments in the bill and the amendments foreshadowed on the supplementary notice paper. I understand that we cannot write everything into legislation. We need to be flexible and nimble because I am sure that unforeseen circumstances will arise and this legislation will not meet the needs of the community. We need to be nimble enough in subsidiary legislation, given the bureaucratic interpretations of the law, to bring about the effect of what the director general and the government, through its policies, are trying to achieve.

Much of this bill has come about out of a review process that started in 2013. Those who were here during the term of the former government will know that we brought in a bill based on the recommendations of that review. Many of the amendments in this bill also came out of that 2013 review, so there has been a long lead-up and a lot of consultation to get to this point. However, there are also reforms in this bill that have come from the new government. The feedback I get is that consultation was not quite as good as it could have been. People have said that that was not consultation. I do not know whether anyone attended the lunchtime session with the Commissioner for Children and Young People. He pointed out that someone can be in a room but are they being consulted with or engaged with? That goes for government consultation as well. It is okay to have a meeting but if one is not listening, how much consultation is really occurring? Some of the feedback I have had around the more contentious part of the bill is that there has not been enough consultation. Even the second reading speech delivered by the representative minister referred to wide consultation.

Hon Samantha Rowe: Member, the commissioner was talking about participation, not consultation. I was listening.

Hon COLIN HOLT: Is there a difference between consultation and participation? That is a debate for another day. Maybe I do need unlimited time.

I think we need to go into the committee stage because there are a few gaps in the second reading speech that do not address every clause in the bill. That is fair enough. It is very difficult to address every clause but some explanation needs to be given in the committee stage and the government needs to be provided with the opportunity to put on the record exactly what it is trying to achieve with each clause. There are government amendments on the supplementary notice paper—another one came out today—that obviously would not have been mentioned in the second reading speech. We will need some clarification on that. Given some of the details in the bill, I think that is a fair expectation from this house and the community of Western Australia.

I move to some of the features of the bill. It will help spirit producers work and operate in the same way as wine and beer producers. Spirit production in this state is relatively new.

Hon Alannah MacTiernan: The legal ones are anyhow.

Hon COLIN HOLT: There are probably a lot that are not legal, including people like me, who tried illegal spirit production in boarding school—unsuccessfully, I might add.

This bill will give spirit producers the same opportunities as our local wine and beer producers, something that did not come to the fore in that consultation five years ago. When I was in the minister's office, the spirit producers were represented strongly, saying that we needed to consider some changes to the bill. That is a good thing that came out of that activity.

Another feature in the bill is the amendment to section 50 of the Liquor Control Act 1988, which seeks to simplify the processes undertaken by restaurants to obtain extended trading permits to serve liquor without a meal. That is not insignificant when we talk about modernising the drinking culture in Western Australia. That is one of the challenges of any liquor bill, particularly this one because it almost has a split personality. It refers to greater reforms in regulation. We have some regulations under section 175, I think, which relate to codes of practice. The bill also has a bit of a split personality—I am going to get this terminology wrong—around the objects of the act and harm minimisation. We wish to ensure that tourism operators and the tourism industry are considered on the same level and in the same light as police and harm minimisation from a health perspective. There is a bit of a split personality in it. Getting the balance right between all those is quite a challenge. We find that the history of the changes to the Liquor Control Act shows that small chunks have been taken out and we have moved more and more to the goal of a safe, responsible drinking culture in our community. We hear arguments all the time that we want to be like Europe, where we can buy a can of beer at the supermarket but we do not see drunk people around. That is the ultimate goal but we have to get there progressively. We cannot go from all these regulations on licences to open slather. I agree with this approach of moving incrementally towards that outcome. Obviously, the move around large retail outlets is rather like the opposite to the dichotomy of encouraging safe, responsible drinking but, hang on a minute, not too safe because we cannot have one of these in the patch next door to where the others are. That is a real challenge in this space.

One of the other changes we have been pushing for is to allow our sporting clubs to sell and supply liquor to people visiting the club. I have often referred to it as a green-fee player provision. When a green-fee player plays at a golf club, they cannot go into the bar and have a drink because they are not part of the club or part of an organised event that the club might be holding. They finish their game of golf and see the bar, but they cannot go in there because they are not a member and are not part of an organised activity. This bill seeks to address that but there are some limitations; for example, people's residences have to be at least 40 kilometres away from the bar or club, but it is a good step in the right direction. A lot of representation was made by some of the smaller communities that do not have a licensed outlet—a pub—other than their local sporting club, which carry a range of restrictions. We want tourists to stay in town and spend money but there is a restriction on how they use the only socialising point of town. These provisions will certainly assist in that. Do we have the balance right? I think it is getting pretty close. Again, it is one of those incremental moves.

The bill contains some red-tape reduction for business provisions around new licence applications and new licence categories. Hon Tjorn Sibma talked about the small bar category. I think that is right: let us move to a category of licence ranging from low risk to high risk, so the interpretation of what has to be addressed changes with the risk of licensee. A small bar licence will achieve that. We know that small bars in this state have been successful. They have added a great deal of fabric and culture to our communities in not just places such as Northbridge, West Perth, North Perth and the city, but also towns and cities like Bunbury, which have a range of small bars, to give that place vibrancy—to borrow a term—and options for people who want to start a business to provide that service without the hassle of trying to get a tavern, hotel or bottle shop licence, which must have a different range of regulations attached to it. That is a good thing.

The bill introduces some other regulations that we must question. At the same time, a heap of other red-tape reductions could have been included in the bill if the department and/or the minister had turned their mind to it. I would like to go through an example of that in a minute, when I get it out of my desk.

Debate interrupted, pursuant to standing orders.

[Continued on page 3430.]

Sitting suspended from 4.15 to 4.30 pm