LIQUOR CONTROL AMENDMENT BILL 2018

Second Reading

Resumed from 13 March.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [1.31 pm]: I rise to offer comments on and support in the main for this legislation, although the opposition, as has been flagged by the member for South Perth, will certainly interrogate this legislation to ensure that it will achieve what the government purports it will achieve.

Obviously, we support the concepts put forward in what was a very brief second reading speech. We support those initiatives, such as the concept of reducing red tape for the liquor industry. Indeed, some aspects of the drafting of this amending legislation fall out of a 2013 review of the Liquor Control Act and were crafted under the previous government. We are very supportive of concepts around reducing red tape for the industry. I am particularly supportive of clause 61, which looks to clamp down on sly grogging in remote communities. When I was Minister for Police, a particularly big issue for police was trying to prohibit people taking alcohol into communities when the community elders and management had had a vote to say that they wanted to be a dry community. One of the difficulties was trying to prevent people entering those dry communities with alcohol because of the remoteness of the location and an anomaly in the previous legislation. Even though police could temporarily seize the alcohol, as I understand it, an interpretation of the legislation by the Aboriginal Legal Service that had been given to many people in remote communities basically had them all challenging police to have the alcohol that they had illegally brought into the community returned to them. I think it is eminently sensible, and a very good deterrent to people who choose to sly grog and take alcohol into dry communities, that this legislation allows police to confiscate permanently any alcohol above the prescribed level individuals can carry at any given time, and if that level happens to be zero, all the alcohol in those individuals' possession can be confiscated.

Obviously we support a bigger focus on tourism—that tourism-friendly focus. Indeed, I believe one of the recommendations of the review from 2013 was to have some input into licensing matters from Tourism WA. If a proposed licence could be opposed by police or public health, which is often the case, Tourism WA could have an intervention power, which would be afforded if this legislation is passed, to put forward the positive tourism aspects of any new hospitality development or any development that has a liquor licence attached to it. My consultation with clubs over the last four years leads me to believe that clubs would certainly appreciate the reduction in red tape for them. A club having to submit its constitution and rules to the Director of Liquor Licensing as a condition of its licence is somewhat ridiculous and certainly provides an unnecessary level of work for both the department and the club involved. If it is an incorporated association and it keeps its constitution up to date, a certificate from Consumer Protection to state that that is the case should always be sufficient. That is what this legislation allows for. The legislation also allows for a tourism component to clubs. I know that the Innaloo Sportsman's Club often has visitors from other jurisdictions for visitors' games and each one of those visitors has to be signed in to the book. A part of the proposed changes to the legislation is that if those individuals live more than 40 kilometres from the club, they will be able to visit without having to go through that additional rigmarole to get inside the club doors and legally drink on that facility.

I am a bit curious about some of the things that have been flagged in the legislation. The second reading speech states that one of the objects of the legislation is to ensure that no juvenile will be able to obtain alcohol through a legitimate business. I am not sure how another regulation could potentially achieve this, and we will ask the minister to explain what he envisages a new regulation will achieve. Presently, it is illegal for anyone under the age of 18 to purchase alcohol from registered premises, but it is also illegal to onsell alcohol and provide secondary supplied alcohol to children under the age of 18. We brought in that law when we were in government. I am not quite sure what could be further added other than—this is something we would welcome—a bigger focus on compliance around those businesses to ensure that if they do sell to juveniles, they are caught and they receive the appropriate infringement for that. There is not much in the legislation about online sales. Indeed, when I was Minister for Police one of the frustrations the licensees in some of our regional towns had was that often there were restrictions on the licensed premises—the pubs, hotels and the like—however there were no restrictions on the amount of alcohol people could order and pick up from the post office. Police told me that at one stage the biggest liquor outlet in Meekatharra was the post office. Everybody was ordering their alcohol online from Perth because it was cheaper. It would get delivered to the post office and they would go and collect it from the post office. Indeed, that kind of activity is commonplace around Australia. A lot of people order alcohol online and have it delivered to their door. If they leave a note on the door to DHL, or whoever it might be doing the delivery, telling them to leave the delivery in a particular place, the boxes of alcohol just get left where the courier is directed to leave it.

On the east coast, people can now use an app to put in a request for alcohol to be brought to them wherever they may be. Nothing in this legislation addresses that form of disruptive technology that is now part of our lives. It is

going to be an interesting test for governments into the future to determine whether this regulatory and legislative regime is actually the appropriate response and the appropriate approach to managing issues of alcohol-related harm in our community. For the volume of alcohol consumed in Western Australia, the vast majority of people do not have an altercation that requires police involvement. The vast majority of people who consume alcohol do not present for emergency services assistance at hospitals or anywhere else. So we have an interesting conundrum in which we regulate, we legislate and we provide a fairly heavy bureaucratic regime around the management of alcohol in our community, but we are not actually making terrific inroads with those individuals who have very serious problems with alcohol and need significant clinical and psychological support to address the cause of their alcohol problem.

I feel that there have been some improvements to the extended trading permits regime. However, those licensees who operate without causing any problems for the police at all—they manage their patrons effectively, they have security, they provide food and water and they apply for extended trading permits around certain times of the year when it is busy—those individuals notwithstanding their superb record of managing their premises are often required to go through an extensive process before being issued with an extended trading permit. As I understand it, this legislation will allow for an extended trading permit to be considered when a licence is being granted. However, the individuals already in the system are still going through quite a significant process of hoop jumping and box ticking so that they can be issued with an extended trading permit for particular events. I would like to see good behaviour in the industry rewarded with a streamlined regime for those who have proven to be good operators. Perhaps those people who have had a couple of adverse interactions with police—for example, violence on the premises, overcrowding on the premises, serving people who are clearly intoxicated and all those sorts of things—should go through a more rigorous process if they want an extended trading permit. Those who do not transgress should have a more streamlined process. That would be a reward for those businesses, which is the vast majority of hotels that operate within the law in a very responsible way.

The reason I make mention of what I think is a substandard second reading speech is that a couple of things in the bill are absent from the speech. I will need the minister to articulate the purpose and reasons behind the inclusion of these aspects when we go into consideration in detail. For example, the minister has decided to change the objects of the act. The objects of an act are very important. They articulate the setting within which every decision of the director, the commission or indeed the State Administrative Tribunal will make with respect to licensing matters. What has been included as an alteration to objects is another object that will encourage responsible attitudes and practices towards the promotion, sale, supply and consumption of liquor that are consistent with the interests of the community. That waves a red flag for me. Including that object sends a message to me that this requires every application to be made around the nanny state lens of the health lobby, which opposes pretty much every liquor licensing application. The objects of the act are quite clear—we need to consider harm minimisation, the responsible service of alcohol, tourism and regulating the supply of alcohol. However, to include this as a catch-all opens up a broad definition that perhaps might lead to more interventions on behalf of those people in the community who would see fit to further restrict the supply of alcohol to law-abiding citizens.

Mention was made of loosening the public interest test. The lawyers I have spoken to who deal in liquor licensing have said that that is not what they believe the amendments to section 38 will do. The second reading speech states that section 38 is being amended so that applications are not allowed to be granted unless they are in the public interest and to have only applications that are prescribed under section 175 to be considered for this particular section. However, proposed section 38(2) contains a catch-all phrase in which the director can include any liquor licence application to be subject to section 38. We will need the minister to articulate in consideration in detail how the burden of the public interest test has been reduced because from my read of it, it looks as though the old section 38C has been reintroduced, which will be a hurdle to the industry.

Mr P. Papalia: No. This is a significant change. We are going to remove the public interest assessment for what is deemed low-risk applications. That is a big change. That is for sporting clubs and small bars. As to the other category to which you referred, we are still retaining the ability for the director to act on it if he or she sees fit. We cannot remove it altogether. But there might be a one-off reason for why, even though it would normally be considered low risk, they still want to do one. That is all it is, but it is a significant change. It is a good thing.

Mrs L.M. HARVEY: We will interrogate it during consideration in detail because we want to make sure that that is right.

[Member's time extended.]

Mrs L.M. HARVEY: The other area that the second reading speech does not address is the inclusion of clause 12, which allows the commission to refer an application to the State Administrative Tribunal for review. We need to understand when it is envisaged that this might occur and why the bill is taking us back to the days of a court jurisdiction determining liquor licensing matters. The whole purpose of the development of the commission and the director's role when the now Premier brought through his changes to the Liquor Control Act was to remove the judiciary from liquor licensing matters and allow only those who are specialists in liquor licensing matters to

determine the outcomes of licence applications. We need to understand if SAT is going to be involved. Is SAT going to receive funding to take on liquor licensing experts to determine liquor licensing matters? We need to understand under what conditions the commission or the director might see fit to refer something to the SAT rather than make the decisions themselves. This could prove to be problematic for some businesses. I would not like to see the commission and the director to be sending all the controversial decisions to SAT because we really want the commission and the director to make those decisions as experts in the field.

The other area that the Liberal opposition is opposed to is the cumbersome changes trying to manage takeaway liquor store outlets. I find the inclusion of this bizarre. The purpose of the legislation that was originally introduced in 2006 when the now Premier McGowan brought the legislation through was that it would help to deregulate the industry and a whole range of other initiatives. In fact, some of the inclusions that occurred as part of that process added significant cost and red tape to the industry. One of those is in section 69 of the act whereby the Commissioner of Police and the chief executive officer of the Department of Health can include as part of an interventional objection any other matter relevant to the public interest. This is where a lot of the interventions and objections from the Commissioner of Police and the Department of Health have added time and, indeed, a significant effort on behalf of publicans and lawyers to get licences across the line. That catch-all has not been removed in this legislation.

[Quorum formed.]

Mrs L.M. HARVEY: Going back to section 69 of the act, "Advertising, referring, investigating and intervening in applications", the 2006 amendments included this catch-all that allowed the Commissioner of Police and the chief executive officer of the Department of Health to intervene on the basis of "any other matter relevant to the public interest". The definition of "relevant matter" is —

> … the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health.

That is incredibly similar wording. That catch-all is indeed what a lot of the interventions by the Commissioner of Police were based on during my tenure as Minister for Police. I received a considerable level of complaints from those in the liquor industry, but my concern is that that catch-all is now included in the objects of the act. We may in fact be chasing our tails here and going back to the beginning.

I get back to these exclusions for the big box retailers. I understand this is about trying to protect smaller, independent takeaway liquor outlets from Coles and Woolworths. I draw members back to the *Hansard* in 2006. *Hansard* is a very interesting place to look. I quote some comments —

> Seriously, the issues that have been raised are: first, Coles and Woolworths compete with liquor stores six days a week and there is no reason that they cannot compete on the seventh day.

The argument at the time was about allowing Coles' and Woolworths' big box liquor outlets to open on Sundays in metro Perth. The quote from *Hansard* continues —

> Secondly, independent liquor stores have now formed major buying groups; they have various names under which they bulk-purchase so that they can compete on that basis. That is a fact, and they are sensible to do that. Thirdly, do members know how ridiculous it is that Western Australian businesses that employ lots of people are not allowed to open on Sundays? That is what we are saying.

Mr J.E. McGrath: Who said this?

Mrs L.M. HARVEY: Who do you think said it, member?

Mr J.E. McGrath: Please tell me.

Mrs L.M. HARVEY: I will. I have more to add. It goes on —

> A big business that employs lots of young Western Australians on reasonably good conditions is not allowed to open on Sundays. That is patently ludicrous. The amendment provides that only liquor stores that are owned by people who own fewer than three liquor stores can open on Sundays. I wonder why that rule does not apply to other businesses that open on Sundays, such as fast-food outlets, delicatessens, corner stores, hardware stores, nurseries, service stations, laundrettes, restaurants and the list goes on. All those businesses can open on Sundays.

Those comments were made by the now Premier, Mark McGowan, when the Liberal opposition in 2006 was trying to introduce a similar amendment to what this legislation proposes—that is, allowing only independent takeaway alcohol retailers to open on Sundays, not the Coles and Woolworths variety. Other members who are now on the cabinet benches also made some comments.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: Let me finish, member.

Mr P. Papalia: If you are going to mislead the house, I have to interject.

Mrs L.M. HARVEY: I am not misleading the house.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: Let me finish! Stop interjecting.

The ACTING SPEAKER: Minister, can you let the member speak.

Mrs L.M. HARVEY: I am trying to build an argument here. Clearly, the member does not like what I am saying. We had a look at the argument that was occurring back in 2006 around big box retailers being allowed to open on Sundays. I feel as though today is groundhog day. There are some other comments here. I quote —

> The only way I can see the natural progression of the argument being put by the members for Alfred Cove and Leschenault is with the imposition somehow of some form of market cap and a requirement on Coles and Woolworths to divest themselves of assets, to get down to some mythical figure of market control or domination. I would also like to endorse the comments made by the member for Vasse in his second reading contribution. I think members have forgotten the role of the consumer in all of this. The Freemantle report focused unashamedly on the role of the consumer and how we increase choice, opportunity and private initiative for these small businesses.

Further on, it states —

> I assume it is a progression to market caps for Coles and Woolworths. It is worth noting, at least for the record, that Coles is 91 per cent owned by Australians and Woolworths is entirely owned by Australians. We are talking about half a million shareholders in respect of Coles and Woolworths.

Further into this contribution, which was a very good contribution by the now Treasurer, Hon Ben Wyatt, he said —

> Indeed, the report found that market caps are unworkable and effectively regulate the consumer. It is worth putting that on record, because these whimsical Deakinite proposals being flung out by the "Independent" members on my right certainly have no basis in law. They are proposing and pushing an economic theory that has long since lost any form of credibility.

That, my friends, is the argument against this ridiculous amendment to try to limit the opening of big box retailers to protect the smaller, independent takeaway retailers.

Mr P. Papalia: Have you ever campaigned against a liquor store in your electorate?

Mrs L.M. HARVEY: When we look at the reasons communities object to takeaway liquor outlets being opened in their constituency, we find that the considerations that people generally make relate to location.

Yes, I did—I was part of a community campaign against a liquor takeaway outlet being opened on Scarborough Beach Road between a preprimary centre and a primary school in an area where we have considerable antisocial behaviour issues associated with takeaway alcohol.

Mr P. Papalia: So it's okay for everyone else but not you!

Mrs L.M. HARVEY: No. You are not listening. Mr Acting Speaker, can I seek your protection, please?

The ACTING SPEAKER: Members, can the member deliver her contribution to the debate in silence, please.

Mrs L.M. HARVEY: What I am —

Mr D.J. Kelly interjected.

The ACTING SPEAKER: Minister for Water!

Mrs L.M. HARVEY: I am articulating that there are sufficient checks and balances in the existing legislation that is proposed to be amended. This legislative instrument is called the Liquor Control Act 1988 with amendments. Within this small phone book, there are enough rules and regulations to manage the supply of alcohol into our community, be it through a takeaway outlet, a small bar, a hotel, a tavern or a casino. The proposed legislation will enable the provision of takeaway alcohol through bars and networks, which is a big step and one that was not actually noted in the second reading speech. I am curious about that omission.

My argument, and the argument of the team on the Liberal side, is that we do not need to introduce a cumbersome, difficult regulatory mechanism that sets a distance between takeaway alcohol retail outlets and other retailers. It will only serve to disadvantage consumers in our community who cause absolutely no problem with their drinking behaviour. If members in my community want to go to Botanica's, which is a very large takeaway liquor outlet in my electorate attached to a hotel, and buy cheap alcohol for their Christmas or birthday functions, or whatever it

is, they should be allowed to do that. If Dan Murphy's opens up next door to them, all power to those people—they can buy cheap alcohol. Like 90 per cent of the community, they will not cause a problem for police and they will not end up in an emergency department. Trying to limit the supply of alcohol into a community, which is what we have been doing in Western Australia for hundreds of years, is not actually fixing the problem of the problem alcoholics. The problem alcoholics who get violent and abuse their wives, who sexually abuse children, who bash up police officers and who end up in emergency wards in hospitals need clinical counselling. They need psychological support to get to the bottom of what causes them to behave so badly when they drink. They need support to understand what they need and why they need to drink so much to the point that they become violent. Trying to restrict supply through some false mechanism and a ridiculous regulatory regime, by trying to put distance between takeaway liquor outlets and existing liquor outlets, is not going to solve the problem. It is stupid in the extreme and we will not support it.

I remind members opposite of the sage words of the now Treasurer and the Premier in 2006 when they were talking about a similar issue of Sunday trading for takeaway liquor outlets. They should eat those words, because we will be repeating those words back to them. This nonsensical conclusion around restricting the opening of takeaway liquor outlets falls right into the remit of the arguments that they prosecuted back in 2006 when they opposed an amendment that was put by the then Liberal opposition.

In conclusion, we will be moving some amendments to this legislation, but we will support it.

Debate adjourned, pursuant to standing orders.