

LIQUOR CONTROL AMENDMENT BILL 2018

Committee

Resumed from 26 June. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 18: Section 36B inserted —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR (Hon Adele Farina): I draw members' attention to the new supplementary notice paper 59, issue 9, dated today. Members, if you do not have today's edition, you need to update that.

Hon AARON STONEHOUSE: I ask the minister to answer this question as much as she can, given that it may pertain to the policy of the bill. Has the government given consideration to effectively grandfathering existing premises that may be affected by clause 18—pubs, taverns et cetera—so they would still have the capacity to expand their business and move into the retail space alongside their pub or tavern business?

Hon ALANNAH MacTIERNAN: Yes, that has been considered. It was decided not to go down that path because there are many examples of country towns that end up losing their community pub because they are essentially turned into liquor stores by stealth. We have seen it happen in the metropolitan area. We saw it happen with the Hyde Park Hotel, Bentley Hotel and the hotel in Bullsbrook. I can also say that the Blazing Bulls Tavern in Kelmscott is no longer open. That was the only pub in Kelmscott. It left the community without an entertainment venue of that type. Some of the more recent regional examples have been the Ship Inn in Busselton and the Highway Hotel in Bunbury.

We looked at that proposal but we believe that that could provide quite a bit of mischief. We think there could be a lot of concern in the community if more and more of these pubs were being utilised to circumvent these really quite modest limitations that we are imposing and we would see more regional communities lose their pubs.

Hon AARON STONEHOUSE: I thank the minister for that answer. The reason that I ask is that this issue has been put forward by several stakeholders, particularly the Australian Hotels Association. Its concern is not so much that pub owners may sell to a large packaged-liquor chain, which would then convert that business into a bottle shop with perhaps a small pub annex, but more so that small pub proprietors would have the ability to change their business model as time progresses. People may have bought a pub in the past with the vision of changing that business 10 or 15 years down the track. In that case, would the government perhaps consider a form of words that grandfathered in existing pubs and taverns but excluded the possibility of those venues being transferred or sold to another entity, so grandfathering in existing premises without the ability for that grandfathering to be transferred perhaps?

Hon ALANNAH MacTIERNAN: No, because I do not think that would necessarily solve the problem. No-one would want to stop pubs having bottle shops, even some reasonably sized bottle shops, attached to them. Nothing is proposed in this legislation that will stop a pub having a reasonably sized bottle shop added to it. If we considered that provision that the member is suggesting, a range of things could happen. Most of these businesses would be corporate entities so it would be possible to simply sell the shares so the licence would still be in the name of ABC company but the shares in ABC company could transfer. It is really important for us to get the context here. We are not talking about some repressive proposal. We are not trying to stop the formation of liquor stores or prevent people who want to provide a reasonable sized liquor store attached to their premises from doing so. If we went down that path, even with that limitation, which I can understand from my days of dealing in corporate law, there are so many creative ways of ensuring that these rules can be circumvented. We would then have to put in immensely big rules about thin capitalisation, and all these areas would be completely over the top for what we are looking at here. We are not seeking to lock in all the existing businesses in aspic. We are not trying to stop growth. We are saying that there is clear community concern. I can remember a lot of anger in Kelmscott. It had a social impact. There was no longer a place for many kilometres—certainly nowhere in the community of Kelmscott—for people to have a drink, or a meal and a drink and listen to a band. All that vanished overnight and we got a great big gigantic Dan Murphy's. This is what lots of communities are concerned about. We have thought about that. We have given it consideration but the minister has decided that he does not believe that is appropriate.

Sitting suspended from 6.00 to 7.00 pm

Hon AARON STONEHOUSE: Before we rose for the dinner break, the minister informed the house that the government is unable to support an amendment to clause 18 that would effectively grandfather in existing pubs and taverns so that in the future they may have the opportunity to expand their business and adopt a retail business model. I appreciate the answer the minister gave us because it clarifies the government's position. It had been my intention to introduce an amendment to clause 18 that would grandfather in existing taverns and pubs. This is an issue that has been raised with me by industry associations and stakeholders. I have canvassed other members of

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the Legislative Council and it is clear to me that there is not broad support for such an amendment, so I will not be pursuing it now in Committee of the Whole. But I have a couple of quick questions on clause 18 that I hope the minister can quickly answer for me, and once I am satisfied with those answers, I will be happy to see this bill passed through Committee of the Whole. Can the minister clarify for us what will be considered the retail floor space of a premises when determining the prescribed size limit? It has been suggested to me that the space dedicated to a drive-through will not be included in the retail space. I hope the minister can clarify that for me.

Hon ALANNAH MacTIERNAN: Yes, it is the intention that the driveway of a drive-through be excluded as long as liquor is not displayed for sale.

Hon AARON STONEHOUSE: Just to clarify that, would that include the driveway that goes through the middle of a store—that space allocated for cars to pass through the middle of the store? Would that count towards whatever the prescribed size limit happens to be?

Hon ALANNAH MacTIERNAN: As I understand it, any bit that is actually the bitumen and does not have displays on it will be excluded, but if there is a driveway and they are doing a Walmart-type stacking of crates along it, that will be included.

Hon AARON STONEHOUSE: Thank you, minister. That clarifies that for me. Another stakeholder raised with me a situation in which a pub or tavern has a retail bottle shop attached, but people can still buy packaged liquor at the bar. The bar is part of the hospitality aspect of the business, but people can still buy packaged liquor from the bar. Would that bar then be considered part of the prescribed floor space for the purposes of size restrictions?

Hon ALANNAH MacTIERNAN: It is true that in premises in which there are over-the-counter sales, that area will be included, but there is quite an easy way around that. They just limit the area on the bar and say, “This is the part of the bar where any over-the-counter takeaway sales are to be purchased”, and thereby they will be able to limit and curtail the amount of bar space. It is just a pretty simple workaround solution that is available.

Hon MARTIN ALDRIDGE: Obviously, this clause is designed to do two things. One is to limit the proliferation of large packaged-liquor outlets, which is a direct quote from the second reading speech. I am wondering whether the government has considered the impact that this may have on a regional town or centre that does not have a large packaged-liquor outlet—however that will be defined under the regulations, which we do not yet know—by potentially incentivising someone to be the first one into that market because they will be there to the exclusion of all others. This clause could be counterproductive in the sense that the government is trying to prevent the proliferation of large packaged-liquor outlets, but in some markets it could ensure that they maximise their competitive advantage if they are the first one in to the exclusion of all others.

Hon ALANNAH MacTIERNAN: The alternative, of course, would be to allow a proliferation of large packaged-liquor outlets, which is clearly not something that communities wish to see. At the same time, it will ensure that those areas in which there is not such an outlet can have access to one, so the whole idea is to stop proliferation; it is not to stop them altogether. That is why we are looking at towns that do not have one. There will be a first-mover advantage in such places; there is no doubt about that. It is possible that there might be some different rules in the regions in terms of both floor space and the circumference of the zone. Obviously, that is to be determined in the development of the regulations. The minister has made it clear that there may well be different considerations in the regions from what there are in the city. But the member is quite right. The way this is conceived will create some sort of fetter, and there will be an advantage for the first mover.

Hon MARTIN ALDRIDGE: The minister mentioned in her reply to the second reading debate that the Minister for Racing and Gaming is thinking about regulations that will be somewhere in the order of 400 to 600 square metres and a distance of five kilometres, if I am not mistaken. Could the minister give me some insight into what the Minister for Racing and Gaming might be thinking with regard to how the regulations might differ in a regional context, as she just mentioned?

Hon ALANNAH MacTIERNAN: The variation is probably more likely to relate to issues of distance and it may take into account population density. As I said, I do not think I can give very much more clarity than that. I recognise that in smaller regional communities, there will be some different considerations and we want to have that dialogue before we determine what the regulations will be. I point out to members that it is important to remember that the regulations will be disallowable instruments, so there will be the capacity, if members believe that we have not struck the right note, to raise this during the debate on the regulations.

Hon MARTIN ALDRIDGE: On that point, if the regulations are published and they are not acceptable to the house and they are indeed disallowed, will that render the provision ineffective?

Hon ALANNAH MacTIERNAN: If there are no regulations under the head of power, the head of power is not redundant but it will not be operative at that time. It is certainly our intention to work closely with all stakeholders,

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which includes members of the various parties, to try to establish some common ground here. We are not going through this exercise for the sake of it; we want to reach the point at which a new regime is put in place. If the regulation is struck down, the head of power will remain and we will try again. The member can see that Minister Papalia has very much tried to work with all parties on this and that is what we want—some negotiated outcome that can gain support in this place.

Hon MARTIN ALDRIDGE: Minister, when I attended the briefing on this bill, I asked the advisers whether they could establish the evidence that supported a greater consumption of alcohol and therefore a greater health impact had a direct link to the size of the liquor store that people shop at. I did not receive anything back from the advisers but a had a phone call from a Labor backbencher to substantiate the government's case, which did not leave me very well convinced of the government's basis for this clause. If the government accepts that the proliferation of large packaged-liquor outlets will lead to greater health concerns and that is its primary motivation, when does the government intend to bring a bill to Parliament to limit the size of Coles and Woolworths and return to smaller corner delis in order to address the obesity epidemic?

Hon ALANNAH MacTIERNAN: I understand what the member is saying. As I have pointed out, there have been many instances of communities being very concerned about the proliferation of very large facilities. I can imagine who the backbencher was who rang the member—someone who has represented her community where they have had those concerns. Of course, the concerns have not been confined to that. It has been a big issue in South Perth, Geraldton, Victoria Park and Belmont. There is a view in the community that we need to have some brakes imposed. I am not a position to present the member with a scientific paper that is going to be able to point to an algorithm that will show how those things match, but we are responding to a very clear community concern. It was a clear community concern leading up to the election so we think that it will be useful and is important to listen to that concern and take some steps. I do not think they are unreasonable steps. We are not saying that everything has to be a corner deli; we are still talking about fairly large operations. I appreciate the point that the member made but it is best seen as a response to the concern that has been raised by people in a number of communities and a response to what we are seeing across local government in which amendments are being moved to town planning schemes, often with limitations of around 300 square metres. We are trying to put in place something that will perhaps stop this being such a random process and put a bit more order around it.

Hon MARTIN ALDRIDGE: It sounds to me that the minister's argument is more focused on saving pubs than it is on the health impact that is being argued by the government. Nevertheless, is the minister sure that this clause will be futureproof, to some extent, given that we have seen the way in which the sale of liquor has changed over time and how retailers have managed to work around the Liquor Control Act in Western Australia by buying pubs and expanding liquor stores, and the way they have dealt with restrictions on retail trading hours by getting involved in that space? If it is the government's intent to stop the proliferation of large packaged-liquor outlets, is the minister sure this will stop them from doing the same with less, or more with less, as the government's only levers are the distance and size of a retail area? If I could draw a comparison, it was not long ago that a big section of my chemist was taken up by shelving and racking with all the drugs in the store ready to be dispensed. These days, that has been replaced by a very neat machine and the pharmacists push a button to spit out the drugs that they need. Now there is more floor space in that chemist to be able to retail products. Does the minister think that this clause is nimble enough to be able to respond to how the industry might seek to change its business model to exploit whatever the regulations might be?

Hon ALANNAH MacTIERNAN: The member is quite right that business always responds to regulation. As I have pointed out, that is one of the reasons that we would not support the grandfathering clause because even with the provision suggested by Hon Aaron Stonehouse that provided it is the same ownership entity, that can be manipulated in many ways. As anyone with any exposure to the workings of the tax office or any other regulatory regime would know, lots of people spend lots of time working creatively. I used to work in the area of liquor licensing myself and pushing the limits of the producers' licence was one of the areas that used to engage quite a bit of my time. In fact, one of the rationales behind why we wanted to use this as a head of power rather than enshrine these provisions within the legislation is so that we will have more capacity. Obviously with a regulatory change, that is easier to do. It will not avoid the scrutiny of Parliament, but it is easier to act on. Of course, there are always going to be these creative responses and we want to have statutory reviews. We are very conscious that we are trying this and there is always the possibility of unintended consequences. The reality is business models are changing and we have to be prepared to act accordingly, but we cannot have the paralysis of decision-making. Just because there is uncertainty in the future does not mean that we do not act now, but we try to put in place a structure that enables us to respond as quickly as possible.

Hon MARTIN ALDRIDGE: The other aspect of this clause relates to the further proliferation of small and medium packaged-liquor outlets across the state and prevents the granting of an application unless it is satisfied

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the existing premises in a locality cannot reasonably meet the requirements for packaged liquor. Can the minister please explain to me how she would define “reasonably meets” and how that would apply?

Hon ALANNAH MacTIERNAN: My understanding is that we are creating a head of power that would just provide a proper legal framework for what the commissioner already does. In the exercise of the public interest test the commissioner already looks at issues such as convenience, the length of time one might need to drive to a liquor store, the range of products, the quality of the amenity and, apparently, harm to the community. These things are already done and we are really seeking to provide a legal framework for that work. This cannot be something just arbitrarily determined by the commissioner, because his or her decisions are subject to judicial review, so if it is believed that those arguments do not make sense or stack up, it is open for that decision to be overridden. As the member would well understand, there are many concepts in the law, and “reasonableness” is a concept entrenched in many areas of law, and sometimes it is not possible to totally define them. These are things that need to be left to the judgement of the time—we look at our communities, the number of people in them who might have access to motor vehicles, how far it is for people to travel to get to that spot and whether they could buy the full range of products that they might reasonably want to. It leaves matters, some of these judgements, to be decided by the commissioner, but they are reviewable. If we are putting value areas into our laws, which we really need to in order to enable judgements to be made, we have to have some confidence in the people making them.

Hon MARTIN ALDRIDGE: As far as I can tell this is not a regulation-making clause. Will this be left to some policy or just the interpretation of the commissioner on the day? Is there an order of priority? If I was looking to apply for a new licence in a community or a suburb, what tests would I need to consider to determine whether my business proposition was viable?

Hon ALANNAH MacTIERNAN: I am not sure I am going to be able to provide much more beyond the things I said before; that is, in putting their application, people would look at the number of liquor stores within a radius of what would be the expected travel distance of an individual, the range of products and the quality of the facility. This is not new stuff. As I understand it, this is the bread and butter of what is done. There are decisions made and there is a body of decisions that builds up and no doubt there is guidance put out by the commissioner from time to time that directs people towards contemplating those sorts of issues. They are very much the sorts of issues that a person would go into in developing a business plan in the first place. They would look at the catchment population, the other stores around them, their competitive edge and what they are offering that others do not offer.

Hon TJORN SIBMA: This is my last question about this clause, having listened to the minister’s responses both to my questions from last evening and questions put by members this evening. Does the government have a measure or framework by which it is going to assess success of this clause? How will the government measure its effectiveness in economic or any other terms? I would be grateful for a response.

Hon ALANNAH MacTIERNAN: I think I said last night that we will be looking at the degree to which we are not finding local governments and local communities agitating, so it will be the extent to which we have been able to provide a framework that seems to have satisfied the community aspirations so people feel they have had an opportunity to have some input and make an impact on how these liquor stores are established and the scale of them. It will be a judgement about the degree to which those issues have been able to be addressed. Obviously, in the review we will look at how industry has responded, what the views of industry are about how this has worked and whether there seems to be unmet need or whether this has led the liquor industry backwards in terms of the standards it has on offer. Again, it is not a precise science, but there is a broad opportunity for stakeholders to have involvement in that review and give us their position. No doubt the various industry groups will have done some work and we will be in the position to judge the merits of the particular submissions and, as I said, the degree to which this issue has ceased to be a cause of such concern within the community.

Hon COLIN HOLT: Before we move on from this clause, I understand the challenges of trying to give the chamber some indication of what the regulations might look like, but I am surprised if the office has not done any real thinking around what it could look like. The minister has given an indication of maybe 400 square metres to 600 square metres and a five-kilometre radius, with things such as population density to be taken into account I am really interested in that part of it. In the first instance, how will the government measure population density? I am really curious about how that translates into regional settings and the thought around that, if the minister has any indication of how the government might manage that.

Hon ALANNAH MacTIERNAN: It is a longstanding principle of government that it does not start preparing regulations until a bill has passed, otherwise it is pre-empting the passage of the legislation—but it is not that there has not been thinking about this. We have been very clear that we want to go out to all the key stakeholders, which includes local government, various industry liquor groups and tourism, to get their view. One suggestion has been made about population. Population density is not necessarily all that hard to determine. We understand where people live, so I do not think that will necessarily be a terribly difficult thing to determine, but the issue is how we

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incorporate that and whether that becomes a key criterion. Obviously, to some extent we think it would be, because if lots of people in high-rise buildings live somewhere, there will be more people within a five-kilometre radius than there would in a place where everyone lives on a half-acre lot. Obviously, in terms of some of the basic principles of satisfying demand, population density is going to be necessary. However, I come back to the point that all this detail will be thrashed out in the next six months. There will be lots of opportunities for input into that. At the end of the day, this Parliament has the right to accept or reject those particular settings.

Hon COLIN HOLT: It really is more a question of process. What process will follow from the passage of the bill to the establishment of the regulations? The minister has given some indication of that and, I would suggest, some commitment to broader consultation with all the industry players. How the office does that across the length and breadth of regional Western Australia will be a real challenge for the office. I was also very interested in the minister's comment that local governments are now responding by potentially looking at changing some planning laws around 300 square metres as a maximum, yet we could end up with a regulation around 600 square metres. Does this regulation override those local government planning changes, if that is what they want to implement, so that even though the state government has indicated an upper or lower limit, that gets taken out of local government hands; or can they do something different?

Hon ALANNAH MacTIERNAN: There are various ways, obviously, at a macro level in which the state government can effect it. It does not happen specifically in this way, but it would go a long way to assuaging the concerns of local government to know that currently there are seemingly no limits on this. Even though some local governments might be going towards a smaller size, the fact that we would have some controls would give local governments less need to go and start making their own rules.

Hon COLIN HOLT: Thank you for that, but does it technically override it or not?

Hon Alannah MacTiernan: No.

Hon COLIN HOLT: A local government can still go out, after regulations are made, and make some limitations of their own. It is important to get this on the record, minister; that is all.

Hon ALANNAH MacTIERNAN: There is a real difficulty for local government at the moment. Most of them are caught up in legal process around this and they do not want to be the ones that have to make that determination. It is turning out to be very difficult for them to have the rules, which they were attempting to accept, entrenched. I think local government is very much looking for the state government to step in and provide a framework.

Hon COLIN HOLT: I appreciate that. My question remains, though: after the passage of the bill and the implementation of regulations, can they technically bring about their own change that may well be different from what the regulations or the bill suggest?

Hon ALANNAH MacTIERNAN: Technically, this is not going to override or stop the local government doing it, but we have to look at the practicality. Local government is finding itself in a very difficult situation because it is embroiled in lots of litigation around this topic, and it is not a space that it wants to be in. Technically, it could still do that, but I think that we would be very much easing the burden of local government if we were putting this framework in place that provides some limitations. Technically, the member is correct, but I also do not think that we can walk away from the responsibility of doing something to try to help here.

Hon COLIN HOLT: Thank you. I was just trying to help to clarify the potential for local governments asking, "What do we do now?" The minister may well be right; this could be the saviour of regulations for them. My last question is about limitations. Does the minister think they could potentially go the other way above a maximum limitation, or is it purely a minimum limitation that they might like to go by?

Hon ALANNAH MacTIERNAN: They would not be able to do that because two things are needed: the local government approval and the liquor licence approval. They could not exceed the conditions that we put in place.

Hon MARTIN ALDRIDGE: I apologise if I missed this earlier, but given that this clause has regulation-making powers, could the minister indicate to me—I think I heard somebody mention six months—whether six months is the time frame we are talking about for the proclamation of this bill?

Hon ALANNAH MacTIERNAN: The advice from parliamentary counsel is that the vast majority of the bill can be proclaimed immediately, but the proclamation of these regulatory provisions should be deferred until the regulations are ready to be introduced.

Hon MARTIN ALDRIDGE: There is no indication of the time frame. Obviously, there has to be some consultation with industry and, as the minister mentioned, local government and others. Is there an indicative time frame?

Hon ALANNAH MacTIERNAN: Yes, there is an indicative time frame of six months.

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Hon MARTIN ALDRIDGE: I am not sure how long it takes to apply for and process an application for a licence, but would the passage of this legislation encourage a flurry of applications to beat the regulations in six months?

Hon ALANNAH MacTIERNAN: That is possible.

Hon MARTIN ALDRIDGE: On this “reasonably meet” test, the minister mentioned that this is not a new phenomenon, and the director applies something very similar now, but that this will enshrine it within the legislation. The minister mentioned population density. Is there some formula that suggests a population to number of liquor licences ratio within the director’s thinking, policy or guidance to prospective applicants?

Hon ALANNAH MacTIERNAN: At the moment, the onus is on any applicant to prove that it is in the public interest for their particular liquor facility to be approved, so they look at that. There is no numeric formula around that. People put in their applications and they write it up. They will make judgements. I really cannot add to this greatly. They will do a survey of the other facilities in the area, make statements about the population and why there is an unmet need or that there are other reasons to support them having their outlet—that this will open up new markets and new opportunities or encourage tourism or whatever. All these things need to be considered and they need to address the issue of harm to the public. For example, in a submission for a small bar there is often the argument that there are fewer fights in small bars and outside small bars than there are in large venues. These are the types of submissions that are currently made and the current provisions required. The onus is set in a structure of a public interest test and the applicant has to establish to the commissioner’s satisfaction that the application meets the public interest test. There is a lot of discretion in this area, and there probably is not a way around that. We need to deal with some quite fine judgements of amenity and community acceptability that require that there is a space there for discretion.

Clause put and passed.

Clause 19: Section 37C inserted —

Hon COLIN HOLT: Very quickly, this question refers to the bill and not to the minister’s amendment on the supplementary notice paper. I notice that proposed section 37C(1) states —

The Director may keep a register that contains the following information ...

And proposed section 37C(2) states —

The Director may make the register available to the public ...

Why not use the word “will” or “must” in proposed sections 37C(1) and (2)? If it is “may”, in what circumstances would the director keep a register or make the register available?

Hon ALANNAH MacTIERNAN: This is basically an empowering provision. Generally, such provisions are expressed as “may” rather than as “will”. Certainly, the drafting preference is that unless it is something a person absolutely must do, the word “may” is used rather than “will”. When it is an absolute obligation, “will” is used. When it is a permissive power, the word “may” is used.

Hon COLIN HOLT: On reflection, it is more about giving the director the flexibility to make a call on that particular provision. Can the minister or the advisers —

Hon Sue Ellery: We don’t have parliamentary counsel here, so I am not sure that we can actually provide an answer to that.

Hon Alannah MacTiernan: Continue, member.

Hon COLIN HOLT: I am actually trying to be helpful. I do not think it is that hard, Leader of the House. I am trying to provide some clarity.

I understand why “may” or “will” or “must” are used. I accept the use of “may”, given that description. But it will still be the director’s decision whether they keep the register or make it available. There must be examples now under these circumstances that “Yes, I will keep a register” and “Yes, I will make it available to the public”. That is the next part of the question; it has nothing to do with parliamentary counsel.

Hon ALANNAH MacTIERNAN: The absolute clear intention is that there will be a register and that that register will be made available to the public. The preference for the use of “may” rather than “will” is so that if, for example, the director goes offline for 24 hours, it will not raise the question of whether the director breached the law because the legislation stated he “will” do something. I know that there are some quite complex arguments about the times when “may” rather than “will” is used in drafting, but, very clearly, the intention is for there to be a register containing the information that is set out in proposed section 37C(1) and for that register to be available on the department’s website.

I will now move the amendment standing in my name. I move —

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.

Hon ALANNAH MacTIERNAN: This amendment will make sure that the full suite of information is there, including the name of the licensee and the specific status, because licences are suspended from time to time, so there might still be a licence, but it is under suspension. It is important that that information also be included on the register.

Hon AARON STONEHOUSE: Am I right in my assumption that this amendment would enable liquor distributors to quickly check the licence status of a customer before dispatching an order? Is that one of the purposes of this register?

Hon ALANNAH MacTIERNAN: Apparently they can do it already, but this certainly will ensure that they can do that.

Hon AARON STONEHOUSE: When I first started looking at the bill before us, I asked an acquaintance who has worked in the liquor industry for a long time for advice on what amendments might be made to the bill. The first recommendation was to maintain a clear register with names and licence status. Hats off to Minister Papalia and his staff for including that in their amendments. I will be supporting the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Section 38 amended —

Hon ALISON XAMON: I spoke to my concerns about this provision during my contribution to the second reading debate. The clause does a few things but one aspect is particularly opposed by the Greens. Currently an application for a grant or removal of a licence is subject to a public interest assessment. Clause 20(1) proposes to narrow this to apply only to licences of a kind that are prescribed. As I comprehensively detailed in my contribution to the second reading debate, alcohol is not a drug without its issues. Although the risk it poses, on the face of it, can appear to be fairly low, when we are talking about the establishment of particular licences, the Greens are of the view that a public interest assessment is merited in all cases. Another reason a public interest assessment should apply in all cases that a grant is being considered—I think this is quite important—is that one low-risk venue is one thing, but a proliferation of a range of venues is a quite different situation. I think, therefore, that a public interest assessment should be required.

As I said before, the public interest assessment guidelines on the Department of Racing, Gaming and Liquor website confirm at page 3 that the level of detail to be provided varies depending on the complexity of the public interest issues that arise. The Greens say that a proportionate approach is appropriate, but an abandonment of the public interest assessment process altogether, even for a seemingly low-risk licence is not. When the independent review contemplated the director having the discretion to consider an application, it was for the removal of a licence within a short distance and an alteration or redefinition of a licensed premises without the need for a public interest assessment submission to be lodged. But this bill goes a lot further than that. Again, the independent review supported the act of distinguishing between low-risk and high-risk licences. It identified low-risk licences as club licences, restaurants, small bars, wholesalers, and producers. It identified high-risk licences as hotels, taverns, nightclubs, liquor stores, casinos and special facilities. It supported using a proportionate approach and a less detailed public interest assessment for low-risk licences. Importantly, it did not recommend abandoning the public interest assessment altogether.

The minister has already given some response to this question in her reply to the second reading debate but I would like, in the first instance, to get on the record which licences will be prescribed as per the new provision in the act so that they will not have to meet the public interest assessment.

Hon ALANNAH MacTIERNAN: I think the member is aware of which ones we are considering prescribing. Is that what the member is seeking clarification on?

Hon ALISON XAMON: I am seeking to get which ones are likely to be prescribed clearly on the record.

Hon ALANNAH MacTIERNAN: We will prescribe the high-risk ones. The others will be there by way of exception. At this point we propose that those that will be prescribed will be high-risk ones—that is, hotels, taverns, liquor stores, nightclubs, and some facility licences. It is also important to understand that the director can, nevertheless, require a public interest test for any of those classes that are not prescribed. He has a discretion under the existing legislation for any other application for which the director decides it is appropriate for the public interest test to apply. There will be those that are prescribed, which will be required to have it and, in addition, for those that

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are not necessarily required to have public interest assessments—I think the member articulated the remainder—the director will have the capacity to deem for whatever purpose that it might require a public interest test.

I listened intently to the member's comments during the second reading debate and I understand that she focuses very much on the harm that attaches to alcohol.

I have an addition to the list of prescribed licences—that is, casino licences.

Hon Alison Xamon: I thank the minister. I was hoping that she would confirm that.

Hon ALANNAH MacTIERNAN: The member is very concerned about the harm generated by alcohol. To some extent that informs where she believes the burden should lie. We are also very conscious that alcohol outlets and venues are also very important parts of the social infrastructure of our community. They are part of the amenity and lifestyle opportunities that people seek and also part of a tourism product. In the lead-up to the election, Minister Papalia indicated that the government was going to try to remove some of the regulatory burden in those areas that were considered to be low risk. That assessment of low risk has arisen from an understanding of the sorts of concerns that may arise from the community, or that we see the incidence of violence and bad behaviour associated with those types of outlets. It is not a perfect assessment, but quite clearly some of these licences over time have showed themselves to be less likely to contribute to high-risk behaviour than others, so we are making the distinction between the different classes of licence.

Hon ALISON XAMON: I thank the minister for documenting that so it is quite clear which ones are intended to be prescribed. The Greens' concern is always about trying to make sure that we are achieving the right balance between what we would accept and agree are the outcomes in encouraging tourism and vibrancy within certain precincts, while at the same time ensuring that we are taking a harm-minimisation approach to these services. The principal concern is going to be around the accumulation of these particular licences. I suspect that we can agree that one licence is unlikely to be onerous within a particular precinct or community, but it can be cumulative in an entire precinct. I note that club licences can bring their own special challenges around increases in antisocial behaviour in particular, and that is one of the reasons the Greens are of the view that maintaining that public interest test is still quite important. We end up having the capacity to make sure that that sort of cumulative impact is potentially able to be addressed. I suppose aggravating this is the fact that, as I understand it, the impact of this provision specifically, by removing the public interest test for these classes of licenses, is not intended to be specifically monitored. I note that the McCusker Centre for Action on Alcohol and Youth requested that this provision should be monitored, and if we were to monitor it, there would be statistics showing whether there will be a spike in low-risk applications and whether there were increased levels of police interventions or more complaints or negative impacts on the public order. That also adds to the concern about the loss of this particular provision. We will never really quite know where there will be an increase in concern.

Hon ALANNAH MacTIERNAN: I understand the point that the member makes, but I think we can take some comfort from the fact that the director has the power at any time to require a public interest test in relation to a particular applicant. If we saw an area—Leederville, for example—where there was an extraordinary proliferation of small bars and creative groups that came together to get club licences, and this was generating a problem, the director has within his power the capacity for any future application to be subject to that public interest test. Having that in there provides a power for the director to manage these problems. It is important to understand that the director will want to do this. We do not want unmanaged outcomes and public outcry. We understand the member's concern, but it is a question of getting this balance right. We think that the provision that the director can, in respect of any class of licence, require the public interest test gives us some protection, and there is always the capacity if this is emerging as a problem to amend the regulation adding a new class.

Hon ALISON XAMON: Thank you, minister. I am aware that the director cannot be everywhere at all times, and it would be unreasonable to expect that the director would necessarily know of any community concerns that might be emerging or starting to bubble away in a particular area or precinct, or pertaining to a particular licence. Would the minister be able to give any indication of how a member of the public, concerned about the operations of a low-risk licence that has not been subject to the public interest test, might be able to raise those concerns directly with the director so that the director might be aware of any cumulative concerns in a particular precinct?

Hon ALANNAH MacTIERNAN: I can assure the member that the police, the public and the local government are very quick to inform the director of Liquor Licensing of problems that are emerging. Notification of what is going on has not been a problem. There is a very great readiness on the part of the public, local government and the police to inform the director of Liquor Licensing of places that are considered problematic. It is important to understand that, in response to that, the director has, even in respect of a licence that is already operating, the power to introduce new conditions to control this, because there are overarching responsibilities to keep good order in and around the premises. That capacity is there. I do not think this provision is in any way going to allow a free-for-all, but it is trying, to some extent, to free up time so that those things that in the past have been shown

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to be low risk are not subject to the same full process. That then leaves more resources to focus on those more high-risk classes, and to respond to other emerging problems, and to jump on them and impose conditions to manage those problems as and when they arise.

Hon ALISON XAMON: I thank the minister for putting those comments on the record. That is helpful. I move —
Page 13, lines 2 to 4 — To delete the words.

Hon AARON STONEHOUSE: Clause 20, removing the public interest test for prescribed premises, or prescribed applications, is one of the few things that this bill gets right. It is removing excessive red tape for low-risk venues. Members may recall that in January this year, a natural wine bar in William Street had conditions foisted upon it as a result of a submission from the WA Police Force to the director of Liquor Licensing. This is exactly the kind of situation we are trying to avoid here. Niche, hole-in-the-wall bars or wine bars are not particularly high risk. Many Greens members probably frequent these kinds of venues, being the chardonnay socialists that they are. I said in my second reading contribution that I do not think the public interest test should exist at all, and although that might be an extreme view for some people, surely we can all agree that small niche bars of the kind that we are trying to promote, which is the policy intent of this bill, are not high risk and the public interest test should not apply in those instances. As the minister has just outlined, people still make complaints to the director directly, and the director can still impose conditions on them.

This seems to me to be just another effort by the Greens to ruin everyone's fun. Controls on liquor, controls on tobacco, a ban on party balloons—where does it end?

Hon Alannah MacTiernan: They support the legalisation of marijuana, so it is not all bad.

Hon AARON STONEHOUSE: They support it with very heavy restrictions. I will not support this amendment and I urge other members not to support this amendment.

Hon TJORN SIBMA: I will maintain a similar position but with less pejorative reflections. I think the essence of the bill is to try to dispense with excessive regulations. I think the Liberal Party's view is that this amendment establishes or imposes regulations when they are clearly not necessary. In all good conscience, I understand the motivation, honourable member, but I cannot support it.

Amendment put and negatived.

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Section 44 amended —

Hon COLIN HOLT: This is a quick question for clarification. I am interested in what this clause is trying to fix. Is there a circumstance in which there is a problem? What is the clause trying to solve?

Hon ALANNAH MacTIERNAN: We are trying to provide the flexibility required to operate a casino complex. Currently, the casino has a number of different licences. It is under a casino licence, a special facility tourism licence and a hotel licence. Currently, a casino licence does not authorise the sale of packaged liquor. Under this legislation, a casino licensee will be permitted to sell packaged liquor. If someone arrives at a hotel and there are a couple of bottles of free wine for them, as I understand it, currently they cannot take those home. This amendment will facilitate the entire casino complex being licensed under a casino licence in the longer term. The lower house amended the clause to restrict the supply of packaged liquor as part of an accommodation, restaurant or dining service or part of a function or promotional activity, so that if someone is given a bottle of wine, they are able to take it home.

Clause put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Section 55 amended —

Hon ALANNAH MacTIERNAN: I move —

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

The idea of this is to put beer on a level playing field with the other alcohol types. Section 55(3) states, in part —

Where the licensee is a body corporate which produces wine or spirits, wine or spirits ...

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The phrase “corporate which produces wine or spirits, wine or spirits” will be replaced with “corporate, liquor”. The intention is not to discriminate against beer and to give those related body corporates that are beer producers the ability to also sell liquor. Currently, wine and spirit producers are permitted to sell liquor that has been produced by a related body corporate, but these provisions do not apply to beer producers. This removes that discrimination against beer.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Section 60 amended —

Hon ALANNAH MacTIERNAN: I move —

page 23, after line 25 — To insert —

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

An extended area permit may be issued to a club to allow the sale and supply of liquor to members and guests of another association. A bowling club can have a permit so that they can sell and supply liquor to members of a visiting Rotary club, for example. The current provisions allow a permit of this type to be issued to allow the sale of liquor on days other than Sunday, Christmas Day or Good Friday. It was considered that the inclusion of Sunday was not warranted because there no longer appears to be any reasonable reason to prohibit a club doing that on a Sunday. This is a historic prohibition that is out of step with the supply and availability of liquor elsewhere.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 33 to 35 put and passed.

Clause 36: Section 65 amended —

Hon COLIN HOLT: I seek a bit of clarification on the ability to prescribe requirements. Correct me if I am wrong, but this is about prescribing requirements for the delivery of liquor to a premises—I guess online delivery or courier delivery. Those delivery requirements will be put down in regulations. It would be useful to have an indication of some of the thinking about what the regulations could be; I think there is an obvious one. I take the minister’s earlier point about not making regulations until the bill is passed. I am interested in the process of arriving at the regulations and what consultation will be done with the industry to get to that end point.

Hon ALANNAH MacTIERNAN: I thank the member for his comments. We are looking at the requirements. It is already the case that requirements must be met when a licensee delivers packaged liquor, but we find that in many instances when people order online, the liquor is dumped at post office boxes or on doorsteps and there are no verification processes taking place. We are looking at how to tighten that up and we are working with groups like Australia Post and Toll Group on a practical solution, but it is likely to include conditions relating to liquor not being left unattended and requiring an adult to sign for it and take delivery of it. Those are the sorts of practical things that will be required; it cannot just be put in a PO box or dumped at a front door. Delivery companies will be required to ensure that it is not left unattended and that it is actually handed over to an adult who signs for and takes possession of the liquor. The precise detail will, of course, be worked out with the major delivery companies, because we recognise that we have to have something that is practical and that will address this problem. I think the member and a number of other members raised in their speeches their concerns about the number of young kids and juveniles who are ordering alcohol online. We intend to address that, and those are the sorts of conditions we are thinking of.

Hon COLIN HOLT: Thank you, minister, I appreciate that. Does the minister have any time frames in mind for when those regulations will come into effect? Is there any plan to educate the community about the change?

[Interruption.]

The DEPUTY CHAIR (Hon Dr Steve Thomas): That is the second phone noise I have heard this evening. I advise anybody who has a phone that is not switched to silent to make sure that it is.

Hon ALANNAH MacTIERNAN: This probably will take another six months to deal with—to do all the consultation and get the regulations right—but of course we recognise that there has to be a proper education process around all our changes. We absolutely understand that this is quite critical and we will be working with all the stakeholders to make sure that they understand the new requirements. As I said, it is already an offence to

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sell liquor to an underage person, but we recognise that the current law does not necessarily go far enough when we look at the new models of doing business online.

Hon COLIN HOLT: That kind of begs the question of resources for enforcement. How does the minister see the enforcement of this provision being carried out once the regulations are in place?

Hon ALANNAH MacTIERNAN: We anticipate that there will be significant penalties prescribed. There could possibly be some regime of spot checking, or auditing of the books of those who are selling online, but a lot of it will be complaint generated—someone finding that their child has received liquor and making a complaint, and then an investigation will be carried out on the company that has been supplying it. There will obviously be some capacity for auditing, but, as with many other offences, it will often be spurred by complaints.

Hon COLIN HOLT: Thank you. Yes, I think that is probably the right way to go. What will be the process of working through a complaint? Where would someone go to make a complaint and then have it investigated or addressed?

Hon Alannah MacTiernan: It would just be the director of Liquor Licensing, but generally, as you said before in other provisions, there would be no hesitancy for people to complain to the director of Liquor Licensing, and this will be under the director of Liquor Licensing. They'll be charged with enforcing the regulations.

Clause put and passed.

Clauses 37 to 40 put and passed.

Clause 41: Section 72A inserted —

Hon COLIN HOLT: The minister will have to forgive me if I have this slightly wrong—it may not be a change. In the provisions of the act, consent of the owner of a premise is required before allowing a liquor licence; is that correct? Do we have to get permission from the owner of a property before a liquor licence can be given out?

Hon ALANNAH MacTIERNAN: That is correct, but we are not amending the legislation in that regard. That is part of the underlying Liquor Control Act but it is not being changed in the amendment bill that is before us.

Hon COLIN HOLT: I want to seek clarification on this. We are inserting proposed section 72A, “Submissions generally”; does the new section have nothing to do with the potential ownership stuff?

Hon Alannah MacTiernan: No, it has to do with the lodgement of a submission. It has nothing to do with the ownership provision.

Clause put and passed.

Clause 42 put and passed.

Clause 43: Section 74 amended —

Hon TJORN SIBMA: I wish to reflect on the discussion that took place last evening during debate on the short title of the bill. I had a similar amendment, which I have now withdrawn from the notice paper. I think the government's amendment is an improvement on what I originally proffered. It reduces regulatory burden, yet it ensures a bit more of a level playing field between those who wish to obtain occasional licences and those who operate bricks-and-mortar venues. I am assured by the industry that it is comfortable with the government's amendment as it stands, so I just wish to indicate that we will support that and I note my appreciation for the minister's open-mindedness.

Clause put and passed.

New Clause 43A —

Hon ALANNAH MacTIERNAN: I move —

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

I thank Hon Tjorn Sibma for his help and cooperation in this matter. This amendment is designed to relate to an occasional licence. The director, as part of the new policy on pop-up bars, has given an undertaking that applications for large-scale events will be advertised on the department's website. The grounds of objection are already listed under section 74(1) of the act. In addition, under section 74(2), the director may require any objector to verify whether the person has any indirect or direct pecuniary interest in the refusal of the application. An

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application for an occasional licence, if not required to be advertised, is not subject to an application but may be subject to a submission or intervention under section 69.

I undertook last night that I would seek access to the draft policy on temporary bars. It is still a draft, so it is subject to negotiation, but I wonder whether I could table the document.

[See paper 1511.]

Hon COLIN HOLT: It is a sensible amendment. I think it is trying to address the imbalance that occurred. I thank the minister for tabling the director's policy. I am asking for a commitment from the minister that once the director's policy is finalised, he will make a statement and table the finalised policy. We are taking it in good faith that the director's policy will be adhered to in order to address the problems with some of the occasional licences. I do not think it is unreasonable for this house to expect that once it is finalised, it will be tabled and potentially a ministerial statement will be made. I would have also thought there would be some sort of commitment that in the future, if it changes to a great degree, again the minister would inform the house of those changes.

Hon ALANNAH MacTIERNAN: I acknowledge what the member is requesting. I will certainly advise the Minister for Racing and Gaming that the member seeks for him to make a statement. I am sure that he would be happy to do that when the draft is finalised. Every time there might be a small change of policy, under the legislative regime that has existed for a long time it is the responsibility of the director, but I am sure that if there is any significant change in policy, the minister will be advised and he will make it public.

Hon COLIN HOLT: I thank the minister representing the Minister for Racing and Gaming for relaying that message to him. There is a great deal of angst in the industry about these provisions and it is looking for some assurance about the director's policy in order to address that angst. Although I think we can accept that minor changes do not need to be brought back to the chamber, we are putting a lot of faith in a director's policy that this chamber has no ability to scrutinise or change. We need to address the concerns of industry. In preparation for this bill it came to us with concerns about its provisions. I was supplied with a whole range of amendments to the bill, which I thought were unworkable for the vast majority of occasional licences. I think a certain part of the industry is looking for assurances that the development of the director's draft policy has been done in good faith, and I can only accept that from the feedback I have received up to this point. The director's policy is only a draft at this time and we have not seen a finalised policy. We have a commitment from the minister representing the minister responsible for the portfolio to take this back to him. On behalf of the sector of the industry seeking some certainty, I am asking that that commitment is absolutely fulfilled and that if there are changes to the director's policy at the director's level, which this Parliament gets very little input into, the industry has some optics across it so it knows exactly what to expect.

Hon ALANNAH MacTIERNAN: We have to set this in the context that there is overwhelming support from the industry for this package of legislation. Not everyone has everything that they wanted, but in a general sense the industry absolutely wants this bill to go ahead; we have to be very clear about that. Of course, the amendments we are making here in relation to pop-up bars improve the situation of bricks-and-mortar licensees over what we have now. We want this to work for the bricks-and-mortar operators. As we said, we understand that balance between wanting to have some of the vigour and excitement of the pop-up bars, but not having them so extensively that they undermine those people who are there day in, day out, week in, week out, providing the underpinning for this very important social and tourism infrastructure. We absolutely get that and we want to do the right thing. Our friends here from liquor licensing assure us that if there were to be any significant change to the policy that will underpin the regulations introduced, there would be consultation with stakeholders and everyone would be advised. I mean, it is in no-one's interest to keep this secret. We are trying to bring all the various elements of the industry with us. As I think I said before in my comments to Hon Martin Aldridge, the whole liquor licensing act has always had a pretty large element of discretion written into it. We are seeking to give more framework for this Parliament. We understand that Parliament wants to be involved and that is why we think that if we have a lot of these things determined in regulation as well as in this amended legislation, it gives a small capability. The minister wants to drive the whole industry forward and we will ensure that all affected parties know of any policy change.

Hon COLIN HOLT: We want the exact same outcome as the government. The issue is that the policy of the independent director of Liquor Licensing is his policy. I understand where we have got to in this draft policy. It is a draft that has been done through consultation, but he is an independent arbitrator and director, so even though the minister might also desire an outcome of what this bill is trying to achieve, as we all do, and I think we are getting a really good balance, the question remains that the director's policy is the director's policy, and it is an independent director who makes those decisions. I guess the minister cannot guarantee that the director will not change the policy, because the director is an independent officer; however, I am asking that the finalised director's policy be brought back to Parliament and tabled, and that any significant changes that the director decides to make in the future can also be tabled and viewed.

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Hon ALANNAH MacTIERNAN: We understand the member's concern and his desire to shape this, but the alternative, which is to set in place a whole legislative regime requiring advertising of all occasional licences, would just be an impossibility to manage. We have really negotiated very hard on this and we have put forward an amendment that some of the members on the other side believe represents a reasonable step forward in this regard. The minister has also undertaken to do a review in 12 months. We have two alternatives: we do not have the legislation or we do. Not everyone is getting everything that they want, but we think that the Australian Hotels Association generally supports this legislation. We have to try to get a compromise and I think this represents the compromise.

Hon COLIN HOLT: I am not arguing against the compromise; I think we have got to a good position with all the amendments. But the issue remains that we are putting a fair bit onto the director's policy addressing some of the issues that have come out previously about occasional licences, as is the industry. All I am asking for is a commitment from the minister to table the final director's policy and update the house as it changes. That is all I am asking for. We are all supportive of the changes; we were involved with most of them. The balance seems pretty good; otherwise, we would still be arguing about clause 1, but we are not. I am just asking for simple checks and balances for people putting a lot of faith in the director's policy to address the issues. If the minister does not want to address that, she does need to worry, but that is the last I will say about the matter.

Hon ALANNAH MacTIERNAN: The minister will commit to releasing and tabling the policy when it is finalised, but we are not going to commit the minister to having to follow up every day with any small tweaking that might take place on the policy. Any policy is up on the website; it is fully available. I would urge the member, if he is concerned about it, to keep a watching brief on the website—I know we are not supposed to mention websites in here, but they do exist out there in the real world—and if he has a question, we would be prepared to entertain it. We will ensure that the policy that has been landed on at the time we are ready to go with the regulations will be released, and then we urge the member to keep in contact with the industry. Nothing will happen that is not made public via the director on the website, which will contain all the director's policies.

New clause put and passed.

Clauses 44 to 51 put and passed.

Clause 52: Section 109A inserted —

Hon ALISON XAMON: I have proposed an amendment to this clause. The clause makes it an offence to carry in a vehicle more than the amount of liquor prescribed in a prescribed area of the state. Effectively, it is dealing with the sly grogging provisions. The Greens have no problem with the principle that this provision is trying to achieve, nor with the maximum proposed penalty of a \$10 000 fine. The concern we have is the minimum penalty of a \$1 000 fine that has been prescribed, which has the inadvertent effect of being a mandatory penalty. In this amendment, we are proposing to simply remove the prescribed minimum so that the maximum penalty remains, but judicial discretion can still apply if the case should arise that someone who is a suspected sly grogger is to be prosecuted. I am sure that I do not need to go through in detail why it is problematic to have mandatory fines in an environment in which we are talking about primarily Aboriginal people who are likely to be caught up in these provisions, although not always. There is already an unacceptable level of incarceration of Aboriginal people due to the issue of unpaid fines, and the concern we have is that this applies to the contrary. I acknowledge that section 109, immediately preceding this proposed section, contains mandatory minimum fine penalties for the sale of liquor offences. However, we are of the view that that does not consider it sufficient justification to enact a further mandatory minimum penalty. Before I move the amendment, I may see whether the minister wants to reply.

Hon ALANNAH MacTIERNAN: The member's point is well argued and we will support that amendment.

Hon COLIN HOLT: I just want to touch on what Hon Alison Xamon was talking about. Proposed section 109A(2) states —

Penalty for this subsection: a fine of \$10 000 ...

The minister accepts the amendment, but I wonder, if the minimum penalty is a fine of \$1 000 and that gets deleted, can it be interpreted that the fine has to be \$10 000?

Hon Alannah MacTiernan: No. If you have a maximum penalty that is death or life imprisonment —

Hon COLIN HOLT: It does not say that it is the maximum penalty; that is all.

The DEPUTY CHAIR: I am going to call Hon Alison Xamon, but I suggest that you move the amendment so that we can debate the amendment.

Hon ALISON XAMON: In that case, hopefully so that we can move on, I would like to move the amendment standing in my name. I move —

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 —

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a fine of \$10 000.

When I originally drafted the amendment, I had included the words “up to \$10 000” precisely for the reason that the honourable member articulated. I wanted to ensure that it could not be interpreted as “the fine”, as opposed to part of a potential maximum fine. I was assured by the drafters that a better way of drafting this particular provision was to simply have it as \$10 000 and that that meaning would apply. So, a maximum penalty was still prescribed, but it will probably be useful to get on the parliamentary record that the way that I was advised that this should be drafted is how it is intended.

Hon ALANNAH MacTIERNAN: I am advised that as a matter of statutory interpretation, the way that the phrase is structured means that it is a maximum, not a mandatory, penalty.

Amendment put and passed.

Hon AARON STONEHOUSE: I would like to just briefly put my view on clause 52, as amended, on the record. I did not address this in my contribution to the second reading debate, but I have raised this with Minister Papalia behind the Chair. I am deeply sceptical of expanding stop-and-search type powers and creating a new offence such as this, as I am aware of instances in which similar powers, such as those under the Fisheries Act, have been abused and used to search vehicles for another reason so that other charges can be laid. I am deeply sceptical of expanding these kinds of powers. I share Hon Alison Xamon’s concerns about the minimum penalty, so I am happy to see that amendment adopted to remove the mandatory minimum \$1 000 fine, but generally on the policy of such a move, again, I do not really think it is any of the government’s business what liquor a person has in their vehicle. I would rather see intent to distribute that liquor proved, rather than merely prescribe a section of highway, search a vehicle, find an over-prescribed amount of liquor and issue a fine on the spot, with what seems to be little due process. Despite the inclusion of Hon Alison Xamon’s amendment, I am still not inclined to support clause 52, as amended.

Hon ALANNAH MacTIERNAN: I understand the concerns raised by Hon Aaron Stonehouse. I share some of those concerns, and it will be very much part of our role as members of Parliament to be vigilant, and if we hear complaints of this type of behaviour, which I do not dismiss may indeed happen, we need to bring that to the fore. It is trying to get a balance. I have a strong sympathy, as I said, for the concerns the member expressed, but we also know the massive problems that sly grogging is creating in many of the Aboriginal communities, leading to very considerable intergenerational dysfunction. We have put some exemptions in; we are removing the minimum fine. It does not resolve all of the member’s concerns, but his concerns are noted and valid, and it is up to all of us now to make sure that in giving police this power, we are vigilant in ensuring that it is not abused.

Hon COLIN HOLT: I absolutely support the amendment, but I would like some indication of the prescribed circumstance. I understand that is a real challenge given the variability of the issue they are trying to address —

Hon Alannah MacTiernan: We are hoping we can finish with this, member.

Hon COLIN HOLT: We are all trying to move to that end.

I am interested in the prescribed circumstance and what that could look like. I understand some of the challenges in this state and the variability of the issue they are trying to address. When I was a minister, I consulted with police a lot on this issue. I think it would be useful to give an indication to this house and the community what the potential circumstances to be prescribed could look like—at least an indicative example.

Hon ALANNAH MacTIERNAN: Is the member asking about the prescribed circumstance in which there might be an exemption?

Hon COLIN HOLT: No. The prescribed circumstance when this provision could come into effect. We have prescribed quantities in a prescribed area of the state. What would that look like? I think it is pertinent because of the last amendment we approved, which potentially takes the fine down to \$1. Is that correct? Yet we do not really have an understanding of how that will be balanced with the prescribed circumstance. I doubt someone would get caught sly grogging a carton of beer and be fined \$1. I would hate it if that is what is expected. I am asking for an indication from the minister of what those prescribed circumstances will be in terms of the amount of liquor and the area of the state, which can vary. It might be a roadway. Let us give the community an indication of what they can expect from the regulations.

Hon ALANNAH MacTIERNAN: The focus will be on those areas where there are alcohol bans. As the member knows, there are areas of the state and communities where there are alcohol bans. The prescribed areas will be areas associated with that and with the conduits into those communities. I would have thought that that was fairly clear. Exactly what the volumes will be is subject to negotiations and discussions with the police about the nature of the problem and how we can best establish that. Obviously, we will allow some exemptions for people carrying a certain quantity of liquor for lawful sale. There will be other prescribed classes of persons or vehicles. Then we have the other prescribed circumstances; there might, for example, be a special event in a region where they might

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want to change the prescribed circumstance because lots of people will be coming into the area at a sorry time, or some other provision for which there might be an application to change that not just in the community, but on the various connector roads. Obviously, all this will be subject to regulation and the scrutiny of this Parliament.

Hon COLIN HOLT: That is very helpful. Thank you, minister. It could potentially be people like station owners who come into town maybe every two months and decide they need to bulk up on alcohol and drinks for themselves and their camp. It could also include tourists travelling through who are a bit thrifty and decide to stock up to make sure that they get through to the next thrifty town. I was only really asking for some assurance that those people would not get caught up in those provisions.

Hon ALANNAH MacTIERNAN: Yes, I confirm that obviously the interests of pastoralists will be taken into account.

Clause, as amended, put and passed.

Clauses 53 to 60 put and passed.

Clause 61: Section 155 amended —

Hon COLIN HOLT: This is an important but subtle change that I think needs to be explained to the house. I refer to proposed section 61(2), which states —

In section 155(7)(b)(ii) delete “believes” and insert:

suspects

That is a small change in most people’s eyes but I think it is worth the minister explaining what that change will mean practically.

Hon ALANNAH MacTIERNAN: This again increases police power as “suspects” is a lower threshold than “believes”. That is the change the member referred to. It is designed to lower the threshold of police power to intervene to seize and open containers of liquor when a person is likely to cause undue offence, annoyance, disturbance or inconvenience to other persons.

Hon COLIN HOLT: I wonder whether that was clear for members; I do not know. Let me feed it back to the minister: it was “believe”, which is a higher threshold for police, and “suspect” is a lower threshold, which means it increases police power to be able to seize alcohol in a prescribed area under prescribed conditions. Is it right that police will not need as much evidence? Is that the right word—evidence? If the minister could enlighten me a little more that would be useful.

Hon ALANNAH MacTIERNAN: That change is primarily driven as I described and the member read back. A whole range of actions currently require the police to suspect rather than believe. They include police power to enter and search premises, to seize liquor being sold illegally and to seize liquor from juveniles. This will make it consistent with the bulk of the other provisions that relate to this area of liquor licensing.

Clause put and passed.

Clauses 62 to 64 put and passed.

New clause 64A —

Hon ALANNAH MacTIERNAN: I move —

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;

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

This amendment has been moved on advice from the State Solicitor's Office. The liquor accords entered into by licensees can contain both pricing and supply restrictions and participants are exposed to the risk of public and private legal action under the Competition and Consumer Act. Section 51 of that act provides an exemption for the abrogation of the act for cartel conduct when that conduct is specifically authorised by a law of the state. This amendment will provide that protection.

New clause put and passed.

Clause 65: Section 175 amended —

Hon TJORN SIBMA: I move —

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

The justification for this amendment is that in our consideration these codes of practice represent unnecessary regulatory overreach and could potentially create a regulatory system within a regulatory system and could not demonstrably prove to be a significant public health advance, but would, quite clearly, necessitate onerous regulatory costs for licensees and place an administrative burden on the regulator. I thank the Minister for Racing and Gaming for his view expressed in the second reading reply speech provided last night that the government will support that amendment. Not wanting to delay the house any longer in its deliberations on this bill, I will sit down.

Hon ALANNAH MacTIERNAN: As I outlined last night, the minister has accepted this amendment.

Hon AARON STONEHOUSE: I will be supporting this amendment. I am glad to see that the government is willing to support it too. The introduction of these new regulations was of great concern to many stakeholders who I have engaged with. They will be very happy to see this part of the clause removed from the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 66 put and passed.

New clause 67 —

Hon ALANNAH MacTIERNAN: I move —

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,

Hon AARON STONEHOUSE: Essentially, as I understand it from the government, this amendment will retain the wording of the previous statutory review of the act but will apply it instead to the changes made under the Liquor Control Amendment Bill 2018 to proposed section 67. This is imperative. There are a lot of questions about the efficacy of the measures that will be introduced in this bill and how we will measure the success of the retail restrictions in this bill. Anyone who has concerns or unanswered questions about the impact that this bill will have on the industry and health should support this amendment so that we can have a statutory review of the act in five years.

Hon ALANNAH MacTIERNAN: We thank Hon Aaron Stonehouse for bringing this to our attention. It was an unintended consequence of an earlier change that deleted the five-year statutory review process. We accept that there is a lot of trial and error in what we are doing and we always need to be prepared to review and look at the consequences of the changes that we have made to see whether they have been effective or whether there is some way they need to be amended to make them more effective. We appreciate Hon Aaron Stonehouse's scrutiny and diligence in this regard.

New clause put and passed.

Clause 68 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

Hon Aaron Stonehouse; Hon Alannah MacTiernan; Hon Martin Aldridge; Hon Tjorn Sibma; Hon Colin Holt;
Hon Alison Xamon

On motion without notice by **Hon Alannah MacTiernan (Minister for Regional Development)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [9.23 pm]:
I move —

That the bill be now read a third time.

I thank members for their very considerable contributions. There has been a lot of forensic examination of the bill and its policy, and the contributions made by members have improved the legislation. I particularly thank the staff of Minister Papalia. As many members have indicated over the past few days, they have put in a big effort to ensure maximum consultation, information and flexibility. This will be a very considerable step forward in modernising our liquor laws in Western Australia, and I thank all members.

HON AARON STONEHOUSE (South Metropolitan) [9.24 pm]: I will be brief. Looking at the bill as it appears now, after the Committee of the Whole, with all the amendments adopted, I am honestly not happy with it. The retail restrictions in particular are an unnecessary measure, and I have concerns about the unintended consequences of those restrictions. I am also concerned that the information provided to us by the minister throughout the Committee of the Whole shows that this bill is being driven by community sentiment that seems rather vague and nebulous, rather than any empirical evidence or data. The government has not been able to cite a specific health study upon which it is basing its assumptions, and it has not been able to give us a measurement by which we can determine whether these measures are successful. I have raised these concerns with Minister Papalia and, although we do not quite see eye to eye on the retail restrictions, he has taken on board my concerns, and the government has agreed to reinstitute the review clause. Although I am certainly not happy about the restrictions placed on large packaged-liquor outlets, there is some comfort in the fact that we will be reviewing these measures in five years at the very least. I welcome the reduction of red tape in other parts of the legislation, around the small bars, and the removal of the public interest test for certain prescribed licences. I thank Minister Papalia and his staff for the effort they have put in, ensuring that I and my staff have been appraised of a very wideranging and complex bill. I will not be fully endorsing the bill as it is, but I welcome the reintroduction of the review clause.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.