

## Explanatory Memorandum

### Liquor Control Amendment Bill 2011 (E233)

*(Introduced by Dr Janet Woollard MLA)*

The purpose of this Bill is to amend the *Liquor Control Act 1988* to provide enhanced mechanisms to enforce the prevention of the sale of alcohol to juveniles and to restrict the provision of alcohol to juveniles without parental consent.

In addition the Bill amends the objects of the Act to make the protection and improvement of public health a primary object of the Act to provide greater protection to the whole community from alcohol-related harm.

Research shows that 84% of Australians consume and enjoy alcohol as part of their lifestyle. Statistics show the national average for the consumption of alcohol by product is 44% beer, 36.8% wine, 12.5% spirits and 6.7% pre-mixed alcoholic drinks.

A recent survey by the National Health and Medical Research Council (NHMRC) found that 48% of Australians drink more than 2 standard drinks (SD) a day. Two SD a day is the level recommended by the NHMRC to reduce the lifetime risk of harm from alcohol-related disease or injury.

Western Australia's alcohol consumption ranks 7<sup>th</sup> in the world. Western Australia has a higher per capita consumption of alcohol than the national average.

We know that while most young people under 18 years of age do not drink regularly, those who do are often drinking at harmful levels and are drinking in risky situations. Per capita consumption for every Western Australian aged 15 plus is 2.7 standard drinks a day. This means over a year each Western Australian who drinks alcohol (using the national percentages for consumption by product), drinks the following amounts above the NHMRC guidelines:

- ◆ 86 cans of Victoria Bitter at 4.6% (1.36 SD a can);
- ◆ 13 bottles of 12.5% wine (7.5 SD);
- ◆ 1 700 ml bottle of Smirnoff Vodka at 36% (approximately 19 SD);
- ◆ 1 375 ml bottle of Johnnie Walker Red Label at 40% (approximately 12 SD);
- ◆ 6 340 ml bottles of 5.5% Wild Turkey (1.5 SD); and
- ◆ 9 275 ml bottles of 4.8% Vodka Cruiser (1 SD).

Of course some people are non-drinkers. Many drink one particular alcoholic beverage, thus for people who drink:

- ◆ beer, drink an additional 195 cans a year on top of the recommended guidelines;
- ◆ wine, drink an additional 35 bottles of wine on top of the NHMRC recommended guidelines.

Of particular concern are the drinking habits of school-aged children. In the 2008 Australian School Student Alcohol and Drug Survey (for 12 to 17 year old students), 64% had drunk alcohol in the past year, 40% in the past month and 27% in the past week. Figures for 12 to 15 year old students show a similar pattern where 58% had drunk alcohol in the past year, 33% had drunk in the past month and 20% in the last week.

The Commissioner for Children and Young People has just tabled the report "Speaking out about reducing alcohol-related harm on children and young people". In this report suggestions of strategies from young people to reduce alcohol-related harm included:

- ◆ "harsher penalties for people who supply alcohol to underage people"; and
- ◆ preventing "an adult supplying young people under the age of 18 years with alcohol".

## **Overview of the Bill**

The *Liquor Control Amendment Bill 2011* (the Bill) amends the *Liquor Control Act 1988* (the Act).

### **Clause 1 Short title**

Provides that the short title of the Bill (when enacted) is to be the *Liquor Control Amendment Act 2011*.

### **Clause 2 Commencement**

Provides for sections 1 and 2 of the Act to come into operation on the day on which it receives Royal Assent and for the remainder of the Act to come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

### **Clause 3 Act amended**

Provides that this Bill will amend the *Liquor Control Act 1988*.

### **Clause 4 Section 5 amended**

Deletes section 5(1)(c) of the *Liquor Control Act 1988* that currently has as an objective of the Act for licensing authorities "to cater for the requirements of consumers for liquor and related services" when interpreting the Act.

With the insertion of a new subsection (c) this new objective of the Act allows the protection and improvement of public health to become a primary object. This new objective along with the other objectives make the health and wellbeing of individuals and the community the primary focus of the Act.

#### **Clause 5 Section 119AA Juveniles on unlicensed premises**

Provides for the insertion of a new section introducing a new offence into the Act to prevent the supply of liquor to a juvenile on unlicensed premises.

A juvenile is defined in section 3(1) of the Act as a person under the age of 18 years.

S.119AA(1) Provides definitions for this section of the Bill:

*parent or guardian* of a juvenile means an adult who is a parent, step-parent, spouse, de facto partner or legal guardian of the juvenile or is otherwise in loco parentis to the juvenile;

*unlicensed premises* means any place other than licensed or regulated premises and includes residential premises.

S.119AA(2) A person must not supply liquor to a juvenile on unlicensed premises unless the person is a parent or guardian of the juvenile. Penalty is a fine of \$4 000.

S.119AA(3) It is a defence to a charge for an offence under subsection (2) to prove that the accused was authorised to supply liquor to the juvenile by a parent or guardian of the juvenile.

This provision makes it illegal for any adult to provide a juvenile with liquor in an unlicensed place, such as at someone's home, unless they are the parent or guardian or have been authorised by the parent or guardian of the juvenile.

#### **Clause 6 Replacement of Division heading**

The heading to Part 4 Division 9 "Juveniles" will be deleted and replaced with a new heading.

#### **Division 9 – Juveniles on licensed or regulated premises**

#### **Clause 7 Part 4 Division 10A inserted**

*Division 10A - Compliance surveys and controlled operations*

*Subdivision 1 – Preliminary*

The insertion of sections 126CA to 126CE will protect children by providing the police the mechanisms to monitor and enforce existing age provisions in relation to the purchase of liquor. This section introduces similar measures and protection as applied in the *Tobacco Products Control Act 2006* (s.95 Controlled purchase officers and s.96 Compliance surveys and controlled purchase operations).

Section 126CF allows for a prosecutor to issue a caution in relation to an offence committed under a compliance survey or controlled operation where the prosecutor considers it to be more appropriate in the circumstances. A caution cannot be issued where that person has previously been cautioned for a compliance survey or controlled operation or a prosecution has previously been instituted against the person in connection with an operation or survey.

### **126CA. Terms used**

S.126CA Provides definitions for this Division:

***compliance survey*** means a survey the intended purpose of which is to gather data as to the likelihood of a juvenile offence being committed if the opportunity to commit an offence is given;

***controlled operation*** means an operation the intended purpose of which is to provide a person suspected of having committed a juvenile offence on one or more occasions with an opportunity to commit or attempt to commit a juvenile offence;

***controlled operations officer*** means a person who is authorised under section 126CB(1) to act as a controlled operations officer;

***juvenile offence*** means an offence under section 121(1) to (4) or 122(2) or (3); and

***prosecutor*** means a person who is authorised under section 168 to institute a prosecution for an offence under this Act.

### **Subdivision 2 – Authorisation and conduct**

#### **126CB. Authorisation of controlled operations officers**

S.126CB(1) Provides that the Director may authorise in writing a person, including a juvenile, to act as a controlled operations officer for the purposes of the compliance survey or controlled operation.

S.126CB(2) Provides that the Director must not authorise a juvenile to act as a controlled operations officer, unless satisfied that all reasonable steps

have been taken or will be taken to avoid any risk to the safety, health or welfare of the juvenile during the operation.

S.126CB(3) Provides the Director the power to revoke in writing an authorisation under subsection (1).

### **126CC. Conduct of surveys and operations**

Provides detail as to how compliance surveys and controlled operations must be conducted.

The purpose of a compliance survey is to gather data as to the likelihood of a juvenile offence (as defined by section 121(1) to (4) or section 122(2) or (3) of the *Liquor Control Act 1988*) being committed.

A controlled operation is an operation undertaken under strictly controlled circumstances with the purpose of providing a person suspected of having already committed a juvenile offence, such as selling liquor to someone under 18 years, with the opportunity to commit or attempt to commit that offence again.

S.126CC(1) Provides that a controlled operations officer may take any action specified in the authorisation for a compliance survey or controlled operation.

S.126CC(2) Provides that if a controlled operations officer is a juvenile, they must deliver any liquor obtained to the person directing the compliance survey or operation.

S.126CC(3) Provides for the concealment of the identity of the controlled operations officer for the purpose of a compliance survey or controlled operation.

### **126CD. Legal Proceedings**

S.126CD(1) Provides protection from liability in legal proceedings for certain named people involved in the exercise of a controlled operation.

S.126CD(2) Provides that a signed certificate from the Director is appropriate evidence that a person was a controlled operations officer and authorised to take the required action for the purposes of a compliance survey or controlled operation.

S.126CD(3) Provides that in a prosecution resulting from a compliance survey or controlled operation the evidence given by the operations officer is not the evidence of an accomplice.

### **126CE. Reports of surveys and operations**

Provides a requirement for the Director when requested to give the Minister a written report on the particulars of compliance surveys and controlled operations.

### **New Subdivision 3 – Cautioning**

#### **126CF. Caution as alternative to prosecution**

S.126CF(1) Provides for a caution to be issued against a person in connection with a survey or controlled operation where a prosecutor considers that, in all the circumstances, a caution would be more appropriate.

S.126CF(2) Provides that a caution cannot be given to a person caught in a controlled operation or survey if they have previously been cautioned in relation to a survey or controlled operation or they have previously been prosecuted in relation to the same.

#### **126CG. Caution certificate**

S.126CG(1) Provides that a person issued with a caution must be provided with a certificate in a form approved by the Director.

S.126CG(2) Provides details of the information required in the certificate in section 126CG(1).

S.126CG(3) Provides that in a proceeding, the certificate or a copy of the certificate is evidence that the person named on the certificate was cautioned in relation to an offence for a controlled operation or survey.