LIQUOR CONTROL AMENDMENT BILL 2010

Consideration in Detail

Clause 1: Short title —

Dr J.M. WOOLLARD: At the moment, the short title is the Liquor Control Amendment Bill 2010. The Liquor Control Act was first introduced into this house as a bill in 1988. Since it was first introduced, it has played a role in the regulation of the sale and supply of alcohol in WA very similar to the role that similar legislation has played in other Australian states. However, other acts that have been introduced in Western Australia, such as the Tobacco Products Control Act, which was introduced by the Labor government, have had much more of a public health focus. Similar acts in other places have been called liquor control acts and some have been called licensing acts. The United Kingdom equivalent of our Liquor Control Act is called the Licensing Act 2003. When we look at the objectives of our Liquor Control Act —

The ACTING SPEAKER: Member —

Dr J.M. WOOLLARD: I am coming back to the short title. The Liquor Control Act reflects the objectives of that act. The primary objectives of our act are to regulate the sale, supply and consumption of liquor; to minimise harm or ill health caused to people; and to cater for the requirements of consumers of liquor, having regard to the proper development of the liquor industry. The objectives of the UK Licensing Act 2003 are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. The focus is on the community. The objectives of the Licensing (Scotland) Act 2005 are to prevent crime and disorder, secure public safety, prevent public nuisance, protect and improve public health, and protect children from harm. I have drawn the minister's attention to the short title of the Liquor Control Act previously. That legislation was enacted some 20 years ago, during which time alcohol and the misuse of alcohol has become a very serious problem in the community. The acts in other countries do what we do. They have licensing controls on the sale and supply of liquor but they also place a much greater focus on public health and the protection of the community, particularly the protection of children. I hope that now and over the next few months the minister, as well as the Education and Health Standing Committee, will look at amending other legislation. The minister's amendments to the act will improve it, but in many ways he is trying to make a silk purse out of a sow's ear. We should amend the whole legislation.

Mr T.K. WALDRON: The member for Alfred Cove spoke to me earlier about this. I understand what she is saying and what her focus is. I think that this bill and the act do many of those things. In my response to the second reading debate, and since I have been the Minister for Racing and Gaming, I have demonstrated that the government and I care very much about all the issues that the member has raised. I do not know whether it will be necessary to change the short title of the Liquor Control Act. We are all trying to get to the same end; it is just a matter of how we get there. I will be very interested to read the Education and Health Standing Committee's findings. I understand the member might be heading overseas to do some research. As long as I am the minister, I will continue to talk with all people about better ways of getting the balance right, which I talked about yesterday. I take the member's point on board. I respect the member for Alfred Cove's opinion and that of all members, and I am happy to look at that in the future. I am not sure how necessary it would be to amend the short title, but I will get some advice on that.

Ms M.M. QUIRK: I want to raise the issue of the title of the bill because it amends the Liquor Control Act. It is uncustomary for me to agree with the member for Alfred Cove, but the act is now about much more than controlling liquor. These amendments will have implications for a range of other areas of activity, both commercial and social. What level of consultation did the minister undertake with the Minister for Commerce, for example, about the impact on small business, or with the Minister for Tourism about the impact the bill will have on the hospitality and tourism industry? Did a small business impact statement go to cabinet when the proposal was submitted to cabinet? What research was done about the collateral impact of this legislation? If research was done, is the current title still appropriate?

Mr T.K. WALDRON: I thank the member for Girrawheen for that question. When I became Minister for Racing and Gaming, the previous minister's legislation had elapsed, due to the election. I examined that legislation and we have carried on with some of some of it and included other things. The general consultation process has been very far-reaching, both with the public and my colleagues. I did not sit down specifically with the new Minister for Commerce. However, I have discussed with other ministers various parts of the legislation. Obviously, the proposal went to cabinet where it was fully discussed, and the small business impact statement was part of the cabinet deliberations. We also met with key government ministers on alcohol-related issues. I meet reasonably regularly with different ministers on that. They have had input, as have opposition members,

particularly the member for Collie–Preston, who has raised a lot of issues with me over the past two years. Quite a number of those issues were taken into account when considering this bill.

Dr J.M. WOOLLARD: It is interesting that the member for Girrawheen just asked about the minister's discussions with the Minister for Commerce. Because of the problems with alcohol in the wider community, I am sure that the member for Girrawheen wants to be reassured that the minister also spoke with the Minister for Disability Services because of the number of people who are left disabled by alcohol-induced accidents; with the Minister for Health because of the number of people who go to hospital on a daily basis because of the accidents caused when people are under the influence of alcohol; with the Minister for Mental Health because of the number of people who, following on from alcohol, then turn to harder drugs and end up in our mental hospitals —

The ACTING SPEAKER: Member! We do not need to revisit the second reading debate.

Dr J.M. WOOLLARD: —with the Minister for Child Protection because of the number of children who are abused because of their parent's alcohol consumption; and the Minister for Transport because of the number of people who are abused on public transport. It is not just the Minister for Commerce, member for Girrawheen; all those other ministers need to be approached about this.

Mr T.K. WALDRON: I have already answered that. I consulted widely. I talked to my colleagues and spoke to all the ministers the member mentioned, particularly regarding health and mental health. The bill goes through a process in cabinet, and all those ministers were involved in the cabinet process. Cabinet endorsed the amendments. I can assure the member that that will continue to happen.

Ms M.M. QUIRK: The minister is aware that as part of this government's push to remove red tape, it has introduced a best-practice process that requires the government to produce a regulatory impact statement for legislation. The idea behind that is to get increased transparency in decision making; to more rigorously analyse legislation; to more broadly consult the public and those affected, such as the stakeholders; and to ensure that the legislation does not have a negative impact on business, consumers or the economy. Also, I think it provides an early warning to government of any unintended consequences. Did the regulatory gate-keeping unit, the Department of Treasury and Finance, make any recommendations in relation to this bill? If so, were the recommendations incorporated into legislation; and, if not, why not?

Mr T.K. WALDRON: There were no recommendations from the department but discussions were held. As I understand it, this all started before that requirement came in. Of course, there were discussions with the department on this.

Ms M.M. QUIRK: Will the minister concede that maybe there has not been a rigorous analysis of what might be the unintended consequences of this legislation?

Mr T.K. WALDRON: No, I do not concede that. We have consulted widely and we have received advice. We have looked at all those areas. The Red Tape Reduction Group gave advice as well. I think that has been done quite thoroughly. I am aware of some of the issues that can possibly come from changes made. We have tried to adapt to minimise those.

Dr J.M. WOOLLARD: I believe that the Director of Liquor Licensing was not given an opportunity to respond to the red tape report. Unfortunately, he is not here with us today, but is someone from the department able to elaborate on that?

Mr T.K. WALDRON: I am advised there was a response from the Director of Liquor Licensing. From that response, further progressions have taken place.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Act amended —

Mr T.K. WALDRON: I move —

Page 2, line 11 — To delete "This Act" and substitute —

This Act, except Part 6,

Mr M. McGOWAN: I would like an explanation from the minister as to what he is trying to do.

Mr T.K. WALDRON: Part 6 amends the Criminal Investigation (Identifying People) Act 2002. These are consequential amendments that are required to the Criminal Investigation (Identifying People) Act 2002 to

authorise the publication of details of barring notices and prohibition orders; therefore the bill now amends more than just the Liquor Control Act. It allows the publication of names and photos, albeit they will be restricted by the amended act.

Mr M. McGowan: Where does this allow them to be published?

Mr T.K. WALDRON: They will be published for the Director of Liquor Licensing, for police and for the licensee. There will be an amendment to this bill that will restrict publication to those people.

Mr M.P. MURRAY: Having heard that, I believe there is a small problem in the amendment moved. Amendments are required to the Criminal Investigation (Identifying People) Act 2002 to authorise the publication of details of barring notices and prohibition orders. The words "restricted publications" should be in there because that is the intent of the barring notices.

Mr T.K. WALDRON: That is a fair question, but that will be dealt with by the proposed amendment to clause 30. We will deal later with the proposed amendment the member raised.

Ms M.M. QUIRK: I appreciate the minister has just said we will deal with that later, but can he explain now, for my own purposes, what information police can release? Will it be limited to photographs or is there an intention it will be anything other than photographs?

Mr T.K. WALDRON: I can deal with that now, but I think it will be better if I deal with it when we move the amendment. We will go through that when we deal with the amendment.

Ms M.M. Quirk: I might not be here, minister.

Mr T.K. WALDRON: It is the name, suburb and a photo, if there is one available. As I explained in the second reading speech, with barring notices, on a lot of occasions there will not be photos available. That will be restricted, as I have just stated to the member for Collie–Preston.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4: Section 3 amended —

Ms M.M. QUIRK: Can the minister provide clarification on what club licences will be expected to operate under an "approved unrestricted manager" given there are some suburban sports and social clubs that operate more in line with a hotel or tavern, such as the Irish Club and Karrinyup golf course?

Mr T.K. Waldron: Sorry; what was the question?

Ms M.M. QUIRK: Can the minister clarify what club licences will be expected to operate under an "approved unrestricted manager"?

Mr T.K. WALDRON: Under "unrestricted" it is hotels, taverns and commercial-type licences. Under "restricted" it will be more the sporting clubs et cetera. Some sporting clubs are big organisations. The Director of Liquor Licensing can insist that they meet an unrestricted licence. I will just run through it. Unrestricted manager licences will be required for managers of commercial-type licences; that is, hotels, taverns, liquor stores, special facilities, and nightclubs. Restricted licences will be required to manage a club and club-restricted licences where the sale and supply is ancillary to the objects of the club. If a person has a restricted manager's licence in a big club, the Director of Liquor Licensing can, in the public interest, insist on an unrestricted manager's licence.

Mr M.P. MURRAY: I think this is a great move forward. It is certainly something that has been brought to my attention by nearly all facets of the liquor industry. I have a few small matters. It may seem very simple here, but just to get it into *Hansard*: how will those managers be identified? Will it be on the back of a blackboard in the premises; those sorts of things? It was previously very official. I believe there is some relaxation of that. Can the minister please expand on that?

Mr T.K. WALDRON: I thank the member for his support of this. I think that this clause will give greater flexibility. The five-year period and all those aspects are really good, and I think it will be welcome. As to the displaying of a name, licensees can choose to display the name of the duty manager either in a conspicuous place inside the premises or on external signage, as is currently required. This is just so that they can inform patrons of the person who is on duty and who is responsible for servicing, supervising and managing the premises. So it is a clear sign placed where it is visible.

Ms M.M. QUIRK: As I understand it, the director is going to go through some sort of process in which he audits club licences so that he can determine which ones will operate in accordance with an unrestricted approved manager. How long is that process going to take?

Mr T.K. WALDRON: I am advised that it will take some time to carry out. It has to be done on a case-by-case basis, so I would think that it will take in the order of six to 10 months. I cannot be completely sure, but that is what my advice is. I think one good aspect is that, once this is in place, people can look it up on the intranet and go to a site to check qualifications et cetera. People will also have a card, like a little licence card, to show that they are an approved manager. If an unrestricted manager can move from Kojonup to Kununurra, he can work there. This is a good move to cut red tape. It is a good move to reduce costs and red tape for the licensees. It is designed to help them and to give portability to managers. I think it is commonsense.

Clause put and passed.

Clauses 5 to 17 put and passed.

Clause 18: Section 116 amended —

Ms M.M. QUIRK: I think the minister has answered this. The question is really for clarification and expansion of what he said earlier. Can the minister tell us what the acceptable format will be for the display of the on-duty manager sign? For example, if there is whiteboard or a chalkboard, will that be sufficient or is it the intention to have something in a different format?

Mr T.K. WALDRON: As long as there is clear signage with the name of the approved manager that is visible, they can be as innovative as they want and do it however they like. They can do that as long as it is clear and visible so that people know who the approved manager is. It is as simple as that. There is flexibility on how they display it. It can be inside or outside, as I said before.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Section 164 amended —

Mr M. McGOWAN: I am not sure whether I am on the right clause. I am referring to the issue of a manager who is the recipient of a barring notice and what that will mean for that manager's employment. I seek some advice on whether this is the right clause or whether it is one further on in the bill.

Mr T.K. Waldron: It will be at clause 30.

Mr M. McGOWAN: Maybe the minister can explain what clause 20 does, so that I can see if I want to talk about it.

Mr T.K. WALDRON: Yes. Apparently, it is just a change of the wording, because the previous provision referred to an approved manager and this clause refers to any manager. Before it was just an approved manager and now we have a restricted manager and an unrestricted manager, so it is just a change to indicate any manager.

Mr M. McGowan: With respect, would the word to be inserted not be "any" rather than a clause of some 15 lines?

Mr T.K. WALDRON: The member probably makes a good point, but when parliamentary counsel drafted it, they took out the whole provision and inserted this clause. It was at their doing. It is only to meet the changes to the approved manager, the unrestricted manager and the restricted manager. The other point the member raised will be covered at clause 30.

Mr M. McGowan: This clause refers to "any manager" as opposed to "approved manager", but what is it actually saying that a manager must do?

Mr T.K. WALDRON: The manager must carry out the duties of either a restricted or unrestricted approved manager.

Mr M. McGowan: Which may include anything authorised —

Mr T.K. WALDRON: Yes, and, as I said before, how an unrestricted manager operates and a restricted manager operates. An unrestricted manager is hotels, taverns and those types of things, and the restricted manager is sporting clubs et cetera where the serving of alcohol is ancillary to the objects of the club. Is that right? I want to make sure that the member understands it.

Mr M. McGowan: I think so.

Mr M.P. MURRAY: Along the same lines, just to get some clarification, proposed subclause (1) deletes section 164(1)(b) and inserts proposed paragraph (b), which states —

> if the offence was committed in respect of licensed premises, any manager who was supervising and managing the premises at the time the offence was committed shall also be deemed to have committed an offence unless it is proved that —

Will the minister give us some further explanation of "unless it is proved that" and proposed subparagraphs (i) and (ii)? I just want to be sure that we are not setting someone up to fail as a manager.

Mr T.K. WALDRON: Proposed section 164(1)(b) provides that an offence for a manager relates only to the manager who was supervising and managing the premises at the time the offence was committed, so it is the manager who was there. Proposed section 164(1a)(b), which is inserted by subclause (2), is that the commission may impose a penalty on any manager who was supervising and managing the premises at the time the grounds of a complaint under section 96 occurred. What this is indicating is that it is the person in charge at the time.

Mr M.P. Murray: What chance of an appeal does he have for such things? He may be charged, but where does he go to and how does he go about it? It is quite restrictive, because he might not have been aware of the incident.

Mr T.K. WALDRON: Apparently, if they are not happy, they have the right to put their case before a court or magistrate.

Mr M.P. Murray: So then they have to go into the civil system; they cannot do it under this legislation.

Mr T.K. WALDRON: If a person wants to have the infringement notice issued heard, it will be heard under this act but before a court. Therefore, it is the normal justice system, as I understand it. The normal system applies; if people get an infringement notice and they want to challenge it, they can go before the court to challenge it, just as with parking infringements.

Mr M.P. Murray: Just further, in some of the other areas where the director has the right —

Mr T.K. WALDRON: Not in this case.

Mr M.P. Murray: Not in this case?

Mr T.K. WALDRON: No.

Ms A.S. CARLES: I seek some clarification on this provision as well because it deems criminal conduct onto the manager. When the legislation states that an "offence was committed in respect of licensed premises", can the minister clarify what sort of offences he is attempting to catch within that provision? If someone in a nightclub is dealing drugs, could the manager potentially be deemed to have committed that offence as well, even if that manager had no knowledge of the drug dealing taking place?

Mr T.K. WALDRON: I am advised that nothing has changed. This provision does not change anything; it is as the act currently operates. If something occurs that it is considered that the responsible manager at the time should have had some control over, that manager can be issued an infringement notice and can either agree to meet that infringement notice or challenge it through the courts. Therefore, the act has not actually changed; it is simply about the wording because we now have two categories. It is the same as applied before these amendments; nothing has changed in this area. It is the normal process. I advise that it would be an offence under this act and not any other act.

Ms A.S. CARLES: Does the minister have any examples of offences whereby managers have been convicted under this provision in the current legislation?

Mr T.K. WALDRON: I do not have a specific case, but I guess it would be things regarding the sale of liquor to a juvenile or serving someone who is obviously intoxicated—those are the type of offences that would be covered. This has not actually changed; it is still there in the legislation.

Clause put and passed.

Clause 21 put and passed.

Clause 22: Section 175 amended —

Ms M.M. QUIRK: As I understand it, this clause relates to section 175 and under section 175(1)(ce) it is proposed to make some changes to implement lockouts.

Mr T.K. Waldron: I do not think that this is the lockout clause.

Ms M.M. QUIRK: Is it not under section 175?

Mr T.K. Waldron: No.

Ms M.M. QUIRK: What is it then, minister? What does that clause deal with?

Mr T.K. WALDRON: As I understand, this clause simply gives us a head of power to do the regulations for approved managers. We still need the approved managers section, so this clause gives us a head of power to make those changes to provide for the categories and the process that will take place.

Ms M.M. Quirk: So that I do not interrupt proceedings, can the minister perhaps tell me which clause does deal with lockouts?

Mr T.K. WALDRON: Clause 34.

Ms M.M. Quirk: I thank the minister.

Clause put and passed.

Clauses 23 to 25 put and passed.

Clause 26: Part 5B inserted —

Mr M. McGOWAN: This is one of the key clauses of the legislation whereby the government provides the head of power to the director general, I assume, but I might be corrected, to declare premises as liquor-restricted premises. In my reading of the second reading speech, this is the clause by which the government will provide the power so that an individual house, an individual garage, an individual oval or whatever the area might be can be declared liquor restricted. Therefore, if a house is renowned for having alcohol in it and I assume some abuse of that alcohol, that house can be declared a liquor-restricted premises, which means that alcohol will not be allowed on the premises. I am interested in how this will work, how it will be enforced, how the evidence will be gathered, what sort of rights of objection or the like might the people who own the premises have and how it will work if the premises are vacated by the people who were causing the difficulty—all those mechanical issues.

I can see how, on the face of it and if we are living in a perfect world, we might say, "Okay, that house at 100 Smith Street in Smithtown is no longer going to have alcohol in it", but what happens if the residents move out the next day? What happens if the residents do not abide by the restrictions? A lot of people who abuse alcohol do so because they simply are addicts, so they will not abide by the restrictions, no matter what the government says to them. How will the government enforce this and what will it do to those people? Are we going to criminalise an individual for no other reason than that person likes to drink too much? That seems to me, just on the face of it, to hark or to send the state, the government and the body politic to an environment in which we will say to people, "Okay, you drink too much, so we're going to make it an offence for you to drink too much." Does the government actually think that those people will comply with that? If I had a house next to me in which people were abusing too much alcohol and were causing me difficulties in my life, I can understand how I might like them to stop. However, I am not exactly sure that criminalising their behaviour in this way, if I am correct in my analysis, would actually do that or whether it would simply mean that those people then not only abuse alcohol but also get fines and most probably convictions. Would that indeed help the situation? I am interested in the answers to all those questions, and in how the government came up with this model and whether this model is in place in any other jurisdiction.

Mr T.K. WALDRON: I thank the member for Rockingham, who has raised some really good points. When I became minister, there were lots of different issues to get across. I also travelled to Alice Springs, where this model is in place and I saw it in operation firsthand. We have section 175s, whereby at the request of the community we consult with the police, health, the wider community, the local council et cetera, and if it is in the best interests and the community wants to do it, we can ban alcohol in that community, but we cannot ban it for a single resident. In quite a few places, we can have a situation in which a family living in a house has other family members, friends or people who tend to visit and indulge in drinking alcohol and are unruly with that, having parties et cetera such that the owners or lessees of that house feel that it is detrimental to the health and wellbeing of the owners or lessees and in particular, I have to say, their children and sometimes young women. This provision gives them the opportunity to apply to the Director of Liquor Licensing to have their house declared a restricted premises. The idea is to protect those vulnerable people. The only people who can apply, which is a key point, is the owner of the premises or the person leasing the premises. If one of those people applies, obviously the other person has a right to put in the reasons why they agree or disagree. If both parties agree, there is not a problem. If the owner wants to apply, then the Director of Liquor Licensing will look at that application. In determining the application, the director must be satisfied that making a declaration either reflects the wishes of the majority of the occupiers of the premises, or is in the public interest, despite not reflecting the wishes of the majority of the occupiers of the premises and is reasonable in the circumstances. The police and the Director of Liquor Licensing cannot apply; the owner or lessee has to apply. From the advice I have, and

from what I have seen in two visits to Alice Springs, it has greatly assisted families who are in situations in which ongoing drunken behaviour is adversely affecting the family. If the premises are declared, signage must be displayed advising people it is a declared residence and alcohol is restricted so that people cannot bring alcohol there or drink there. If it is occurring, the person can report that to the police; or if the police have reasonable suspicion that there is alcohol being consumed in a restricted premises, they have the ability to go in, as they would in a normal situation. The aim of this is to protect people who are in vulnerable situations. The director has to consult the police, Health, the family et cetera and he takes that into account in making that decision. If the lessee leaves, they just advise the director that they have left and the declaration would cease. The director can also cease the arrangement or the people themselves can apply to cease the arrangement.

I hope that answered most of the member's questions. If I missed any, I will let the member re-ask.

Mr M. McGOWAN: I have a point of clarification. The minister said that the only people who can apply are the owner and the lessee, and the director will make the application based upon all those considerations. However, proposed section 152P(4) states —

> The Director may exercise a power under subsection (1) on the application of —
>
> (a) an owner or occupier of the premises; or
>
> (b) a person who is, in relation to the premises, in a prescribed class of persons.

That is a third category of people who can apply. That is contrary to what the minister just said.

The second point is that the minister said only if the person who is the owner or lessee of property agreed would the declaration be made; however, proposed section 152Q(1)(a)(ii) reads —

> is in the public interest, despite not reflecting the wishes of the majority of the occupiers of the premises;

That could be anyone on the premises. I understand the point. The minister has been to Alice Springs, so this is an issue that is an initiative to deal predominantly with Aboriginal communities, I expect. The minister will confirm that. We all know that in many communities around the state there are houses that are party houses and people go there and drink too much and so forth. However, I am concerned, as the minister identified, that there are people who might be living in those premises who, outside of their wishes, will be criminalised by the actions people take that are outside their control. We are relying on the minister's best wishes, because this legislation says there are categories of people who can apply under these rules.

As I said, I would like those people to stop drinking and I would like the world to be perfect, but as we know, that is not the world we live in. I have a concern that the people who the minister is trying to protect—the women and the children—might be saddled with a bill and a record, based upon this clause, even though with all the best intentions in the world the minister is trying to protect those people. I wonder what protections will be in place to ensure, apart from the minister's comments in this consideration in detail stage, that people in those circumstances will not be dealt with harshly or be given added burden in their already burdensome lives as a consequence of this provision.

Mr T.K. WALDRON: There could be a complex ownership structure or perhaps an agency such as the Department for Child Protection or a local government authority could have an interest in applying. In that respect, we would have regulations to do that, and they would need to be made and presented to Parliament. Mainly, it relates to a complex ownership situation—a trust or something like that—to cover that. We would have to make a regulation if we were going to do that. That is leaving it open if the situation arises, and it should happen in the best interests, then we would have to make a regulation, and that regulation would have to be presented to the Parliament. We are saying that the occupier, whether it is the owner or the lessee, is the only one who can apply. If anyone else wanted to apply, regulations would have to be made. There would have to be a specific circumstance and a justifiable circumstance.

I want to confirm what I said before. If someone is drinking liquor or taking liquor into a restricted premises, the owner or occupier will be able to call the police, who will have the power to seize the liquor and take action against the person who committed the offence. We are policing by consent. The police will still have the power. If they thought that this was a restricted premises and there was obviously a party going on, they would have the power to go in.

Mr M. McGOWAN: Let us say that I ring up and get my house declared a restricted premises, but on Friday night I had an outbreak and I drank too much, am I then subject to the rules?

Mr T.K. WALDRON: If it is a restricted premises, it is like a section 175 notice at Oombulgurri. If I as minister go to Oombulgurri and take in alcohol and drink at Oombulgurri, I am committing an offence. If the member's

house was declared a restricted premises and he invited me around, he would have the sign displayed and I would know going in there that it was a restricted premises. If the member said, "It's all right, Tuck; we'll have a beer." We would both be breaking the law if we did that. If I take the alcohol in there, I am breaking the law. It is the same as the section 175 rule, but it applies to premises.

Mr M. McGowan: Do they have to have a sign up?

Mr T.K. WALDRON: Yes. I said that before; they have to display a sign and it is an offence if they do not. If the member goes to Alice Springs and if he goes to some units, he will see a block of 20 units of which maybe two are restricted because, obviously, they have applied. They have had issues and their director—I think it works similarly to what we are proposing here—agreed with that; that is, either the owner or the occupier or both have agreed, and the director has said the restriction is in the best interests upon their application. It is signed. Therefore, anyone who takes alcohol in or consumes it commits an offence. I will not name the towns, but some towns experience real problems in some streets. I get told as I a travel around, "We have problems here, but it is only one or two houses where all the problems exist." In those houses, sometimes there can be little kids—the same as at those communities—who are subject to that drunken, brawling behaviour. Sometimes the kids do not go home because it is safer to be on the street than to go home. If they are at home, they do not sleep and they do not go to school—all of those things. As I said in my second reading speech, this is part of what we are trying to do; namely, to reach that balance of allowing people to enjoy liquor socially but also protecting those who are vulnerable and those placed in a situation in which they have no control but are greatly affected. It is an honest and very sincere attempt and it has great support. Technically, I think we have it right, but obviously we will monitor it. If we found anything wrong with it, I would certainly change it.

Mr M.P. MURRAY: I certainly have some concerns about this area. One is about occupiers—two owners—having equal rights in the house. I have heard some of the debate. How does that work? Proposed section 152Q(4) states —

> For the purposes of deciding whether to declare premises to be liquor restricted premises the Director may consult with any or all of the following …

"May" is a very misleading word. It should be something like "must" because there will be owners, occupiers near the premises and police—the whole lot. I would like further explanation on that please.

Mr T.K. WALDRON: I thank the member for raising that point. Where there is joint ownership of a house, such as the member for Collie–Preston and I being tenants in common, and we both agreed to apply to make it a restricted premises, we could apply and the director would still decide whether he would accept our application or not. If we did not agree, the director would look at it. If one party opposed it, the director would give that person an opportunity to say why he opposed it. The director would then decide what is in the best public interest. With regard to "may" and "must", while the director will consult, I do not think he will want to consult with the police commissioner on every application. It will be general consultation. If we say "must" he will have to do so and that will make the provision unwieldy.

Mr M.P. MURRAY: It opens up the wound a bit wider. We know how busy some of our public servants are today and it may be easy to just sign off. That concerns me. I think the member for Girrawheen said something about using the word "mandatory".

Ms M.M. Quirk: That means "must" as opposed to "may".

Mr M.P. MURRAY: It leaves it open to abuse. I am not saying it will occur. But also perhaps in the third house down in the same street one person will be consulted and the next one may not be consulted. Discrepancies like that bring laws undone.

Mr T.K. WALDRON: This will be entirely a voluntary process; it will happen only if the owner or the occupier applies. The director will not consult with people down the street. He will consult with the people who apply; it will be about their house, not about the people down the street. He may want to consult with the police and probably will at certain stages. But it should not be made mandatory for him to do that. This involves a voluntary application by people in a private residence who seek some support to rid themselves of ongoing behaviour and incidences in their house that put them and their family at risk. It is very much about them, not the people down the street. Neither they nor the police can apply. Only the person who occupies the house or the owner of the house can apply.

Mr M.P. MURRAY: Proposed section 152R(2) states —

> On making a liquor restriction declaration the Director must give notice of the declaration to each other person who owns or occupies any part of the liquor restricted premises.

I am not trying to point the finger at anything, but I am concerned about itinerant owners who may be away and come back to find there is a restriction. The proposed section says they "must" be notified. Sometimes people cannot be found.

Mr T.K. WALDRON: Is the member talking about the owner being away and a restriction being applied while he is away?

Mr M.P. Murray: Yes.

Mr T.K. WALDRON: If there is an owner and a lessee, the owner can agree to it with the lessee. If the member for Collie–Preston were renting my house and I wanted to make it a restricted premises and the member for Collie–Preston agreed, we could apply. If he does not agree, he has the right to write to the director stating why it should not happen. The director would then take that into account and then make the call in the public interest.

Mr M.P. Murray: I am talking about absent owners.

Mr T.K. WALDRON: They must be notified. A restriction notice would not apply unless they agreed or had the opportunity to agree.

Mr M.P. MURRAY: What if there were two owners of the house, and one had gone hunting or fishing for a month and returned to find a restrictive notice on the house?

Mr T.K. WALDRON: It could not happen without that person being notified. The notice would not be placed until the person had the right to have a say. That is what it says in the legislation.

Mr W.J. Johnston: Which provision in this bill requires that?

Mr T.K. WALDRON: I will find it.

Ms M.M. Quirk: It seems to be 152Q(4), which states —

> …may consult with all or any of the following persons —
>
> (a) owners or occupiers …

Whether it is all owners, if there are joint owners, or whether one satisfies that provision is not abundantly clear.

Mr W.J. Johnston: In answer to the member for Collie–Preston, the minister said that the owner would have to be notified. But the wording in the proposed section the member for Girrawheen pointed out says that these are the people who "may" be consulted. It is not the same thing.

Mr T.K. WALDRON: I think we are talking about two different things here.

Mr W.J. Johnston: No; we are talking about the same thing; that's the problem.

Mr T.K. WALDRON: Proposed section 152R stipulates how the director must notify persons of a declaration. The director must give notice of the declaration to each other person who owns the premises. That is giving notice of declaration. I think the member is talking about joint owners, one of whom is away and cannot be notified. Is that what he is saying?

Mr M.P. Murray: That is right.

Mr T.K. WALDRON: That is not right. I will have to check where that is stipulated. I understand that if an owner is not available, the director would not be able to proceed until the owner had the right to either agree or not agree and state his reasons.

Mr W.J. Johnston: While you are on your feet, minister, can your advisers find the appropriate proposed section and refer us to it?

Mr T.K. WALDRON: It is proposed section 152Q(3), which states —

> If the applicant is not the sole owner and occupier of premises to which an application relates the Director must not declare the premises to be liquor restricted premises unless the Director is satisfied that each other person who owns or occupies any part of the premises —
>
> (a) consents to the declaration being made; or
>
> (b) has —
>
> (i) been informed of the application; and
>
> (ii) had a reasonable opportunity to make submissions to the Director.

I think that covers the point.

Ms M.M. QUIRK: I refer to proposed section 152W(1), which provides that a director may make a liquor restriction declaration if he is satisfied of one or two things: either that it reflects the wishes of the majority of the

occupiers of the premises, or that it is in the public interest despite not reflecting the wishes of the majority of the premises. What is meant by the "public interest"? Is it the same criteria that applies throughout the legislation? If so, what is the minister's understanding of what "public interest" means?

Mr T.K. WALDRON: When we talk about "the majority" it could be a mother who has a house of seven children and six are boys who do not agree; they want to keep doing what they are doing, and they might be the problem. In this case, the director general would then look at the public interest. Although the majority might oppose it, it still may be in the best interests of perhaps the mother and the younger child. In that situation the director general would look at it and, if he felt it was in the public interest, he could make the decision. Once again, the mother would still have to apply to him before anything could happen.

Ms M.M. QUIRK: I think the minister misinterpreted the question. I want to know what sort of criteria the Director of Liquor Licensing would use to establish that it is in the public interest. For example, under proposed section 152Q(1) there might be antisocial behaviour issues, health-related issues or noise-related issues around the house. All of those issues would come into it; I just want to know. Clearly, the public interest criteria in that proposed section might be different from the criteria in other proposed sections that the director can use.

Mr T.K. WALDRON: I do not think it is different. The main issues in the public interest that would be taken into account up-front are issues relating to child protection, domestic violence, actual physical danger to people, social disruption for that family, and the wellbeing and education of children and their right to have a safe environment in which to live. Those issues are very much in the public interest, like every other issue on alcohol-related violence that we talk about. The issue of protecting children as much as we possibly can is a public interest issue. I think that is the best way I can explain it.

Clause put and passed.

Clauses 27 to 29 put and passed.

Clause 30: Sections 115AA to 115AE inserted —

Mr M.P. MURRAY: Thanks to a briefing with the minister and his staff, the word "quarrelsome" will be removed from proposed section 115AA. It could be argued by some people that the word "disorderly" as it is used in this proposed section is also quite soft. I would therefore like some explanation from the minister on whether "disorderly" is defined in the Police Act or whether there is some other explanation for it in this proposed section. I ask, firstly, for the sake of *Hansard* and, secondly, on behalf of some of my colleagues.

Mr T.K. WALDRON: Before I reply, I seek some clarification, as there is an amendment standing in my name on the notice paper before we get to those words in the proposed section. I wonder whether it would be better to cover that as we go through the amendments. Is the member for Collie–Preston happy with that?

Mr M.P. Murray: Yes.

Mr T.K. WALDRON: In that case, I move —

Page 30, line 20 — To delete "those" and substitute —

licensed

This amendment is needed to clarify that the Commissioner of Police is able to issue a barring notice for any class of licensed premises and is not restricted to the class of licensed premises in which the barred person displayed the antisocial behaviour. If someone displays antisocial behaviour and is barred, this means that that person can be barred from more than one type of premises. The person may be barred from only one type of premises, but this enables the person to be barred from more than one type.

Mr M. McGOWAN: I have a number of concerns about this clause. I realise that the minister has sensibly removed the word "quarrelsome" —

Mr T.K. Waldron: We are not up to that bit yet.

Mr M. McGOWAN: We will get to it, though, as the minister has an amendment standing in his name on the notice paper to remove the word "quarrelsome".

Mr T.K. Waldron: Yes.

Mr M. McGOWAN: That, I think, reflects an amendment that the member for Collie–Preston put on the notice paper. However, I have some concerns about the clause. The minister is saying that the Commissioner of Police can bar from entering a class of premises or specific licensed premises people who have been violent, quarrelsome—although "quarrelsome" will be deleted—disorderly, engaging in indecent behaviour, or contravened a provision of any written law. To me the terms "disorderly" and "contravened a provision of any

written law" are pretty extreme. Members of this house have probably contravened provisions of written laws. The minister drives to the country regularly. He has probably contravened certain provisions of the written law in the Road Traffic Act on his way home.

Mr T.K. Waldron: I have.

Mr M. McGOWAN: I want to suggest a couple of scenarios to the minister and I want some clarification of "disorderly". As we know, numerous people—tens of thousands—work in hospitality around the state. Let us say a young chef at the conclusion of an evening of work and drinking and so forth is caught, charged and convicted with urinating in a public place.

Mr T.K. Waldron: This amendment relates to licensed premises.

The ACTING SPEAKER (Mr J.M. Francis): I am sorry, minister and member for Rockingham, I just want to clarify where we are at. The minister has not sought leave to move the amendments en bloc. We are therefore dealing with the initial amendment moved.

Mr M. McGOWAN: Clause 30, the first provision.

The ACTING SPEAKER: That is right, but that is the only one that the minister has moved at the moment and I want to clarify that the member is talking to it.

Mr M. McGOWAN: I am.

The ACTING SPEAKER: I thought the member was speaking to later proposed amendments to clause 30 as well.

Mr M. McGOWAN: The amendment to page 30 is the one we are on.

The ACTING SPEAKER: There is more than one amendment. Does the minister want to seek leave to move them en bloc?

Mr T.K. Waldron: Does the member want me to move them all at once?

Mr M. McGOWAN: I am dealing with the first one. I am actually dealing with the one in question.

The ACTING SPEAKER: The words "violent" and "quarrelsome" are in the second amendment, member for Rockingham.

Mr M. McGOWAN: No.

The ACTING SPEAKER: Yes. The first one is to delete "those" and substitute "licensed".

Mr T.K. Waldron: The deletion of "quarrelsome" is not the amendment that I have just moved, member.

Mr M. McGOWAN: But I am dealing with the actual clause.

Mr T.K. Waldron: I have just moved the amendment.

The ACTING SPEAKER: I am not trying to be difficult, member for Rockingham, but the minister has just moved his first amendment to clause 30; we therefore have to deal with the amendment that he has moved now.

Mr M. McGOWAN: I can say all this now or I can repeat it again in a moment; whichever one the minister likes.

The ACTING SPEAKER: The minister is happy to answer the question.

Mr T.K. Waldron: I am happy to answer the question.

Mr M. McGOWAN: Okay. Let us say he is a young man who has contravened a provision of the written law; that is, he urinated in public at the end of a long evening. He may have done it on licensed premises. As we know, licensed premises are often quite extensive and comprise beer gardens and the like. He is a chef working in the hospitality industry. If he has a barring notice issued against him, that will cost him his job.

Mr T.K. Waldron: No.

Mr M. McGOWAN: Hold on! The clause refers to a specified class of licensed premises. He can therefore be given a notice prohibiting him from entering a specified class of licensed premises.

Mr T.K. Waldron: Could I just help the member there a bit? There is another amendment on the notice paper that allows a person who gets a barring notice to actually come in to work in his job. So there is another amendment that covers that. It is a fair point that the member makes, but we have covered that.

Mr M. McGOWAN: Under the bill as it currently stands, prior to amendment, that person could lose his employment; is that right?

Mr T.K. Waldron: He could, but we are amending it so that it won't happen. That is part of the amendments on the notice paper.

Mr M. McGOWAN: Hold on! Is it automatic that that person can come to work?

Mr T.K. Waldron: Yes, it is.

Mr M. McGOWAN: So, it is automatic, if someone is subject to a barring notice —

Mr T.K. Waldron: I need to tell the member about barring notices in a minute so that he understands what I am saying.

Mr M. McGOWAN: All right, we will go back to that. But I want some explanation as to what the term "disorderly" means. I am pretty confident that "disorderly" is a very broad term. And "contravened a provision of any written law" seems to me to relate to any offence under any Western Australian statute. It seems extremely broad to me and I seek some clarification on what that actually means.

Mr T.K. WALDRON: Before I answer that question specifically, I ask the member to bear in mind the idea of these barring notices. There is no criminal offence committed in a barring notice. The barring notice, as I said in the second reading speech, is about giving people time out to think about their actions. It is actually there to protect the public and the licensee, and also to protect offenders themselves, particularly a young person who may have made a mistake that he or she regrets.

To be barred, either the licensee would have complained and asked the police to issue a barring notice, or the police would have witnessed an incident that they felt warranted a barring notice. The police would then apply to the Commissioner of Police for that barring notice. The lowest rank that can issue a barring notice is an inspector of police, and that inspector cannot delegate the issue of that notice. There are therefore checks and balances in place. This provision is actually designed to prevent people from getting into further trouble by doing things like glassings et cetera. There are prohibition orders, too, if people behave really badly.

There are definitions of "disorderly", but once again it will be up to the commissioner to decide. Section 74A of the Criminal Code Compilation Act 1913, enacted a fair while ago, states —

(1) In this section —

behave in a disorderly manner includes —

(a) to use insulting, offensive or threatening language; and

(b) to behave in an insulting, offensive or threatening manner.

(2) A person who behaves in a disorderly manner —

(a) in a public place or in the sight or hearing of any person who is in a public place; or

(b) in a police station or lock-up,

That last part does not apply.

The other parts relate to being violent or disorderly or indecent or contravening a written law. Someone who contravenes a written law—that is, breaks the law on the licensed premises, and it must be on the licensed premises—could be subject to a barring notice. Either the licensee would lodge a request or, if the police witnessed someone breaking the law, they would ask the commissioner, who would then decide. The lowest rank it can go to is inspector.

Mr M. McGOWAN: The minister has clarified "disorderly" as being insulting language. If a person uses insulting language in licensed premises, that person can be barred from going to licensed premises. Is the minister serious that insulting language is sufficient for someone to be barred from a hotel, bar or restaurant? I mean, seriously; I do not know what sort of world the minister lives in, but I assume that, being the sporting icon he regularly expresses himself to be, he might have been in premises, a sports club or somewhere like that, where someone has used some insulting language. For that offence, a person can then be liable to be barred from licensed premises. To me, that is extreme. I say to the minister that if he was being honest and we were having a conversation outside this place, he would agree.

I would like to know how "disorderly" is different from "quarrelsome". The minister deleted "quarrelsome" because he said it was too extreme. I would have thought being quarrelsome with someone is worse conduct than using insulting language. The minister has deleted the provision that is the greater of the two evils and left in the lesser of the two evils. I think the minister might want to reconsider the inclusion of "disorderly".

Secondly, I missed exactly what the minister said about "contravened a provision of any written law", but I think he said that it had to occur on those premises. I could open any statute in this place or the Criminal Code and find some extremely minor offences. This refers to the Commissioner of Police or an inspector. How many inspectors are there? I am not sure; the member for Midland will know.

Mr T.K. Waldron: Not a lot.

Mr M. McGOWAN: On the basis of some extremely minor offence, an inspector can therefore provide a person with a barring notice from a specified class of licensed premises. To me it is over the top. I do not think it fits with the Australian ethos of people being able to go to the pub and enjoy themselves and on the odd occasion use a bit of harsh language. I might add that I have heard the minister use harsh language in this very room, and even insulting language!

Mr T.K. Waldron: I am a tiger in here!

Mr M. McGOWAN: The minister is well known as a very offensive gentleman in this place! I may have even used a bit. In fact, I may have used a bit of harsh language about the minister's leader. I think this place is a licensed premises; we have a bar here.

Mr T.K. Waldron: Not here, you don't!

Mr M. McGOWAN: If the minister takes this to an inspector and says, "Look what he said about the member for Central Wheatbelt", I could be barred from—now that I have suggested it, I bet he takes it up!— any hotel, bottle shop or restaurant around Western Australia. Honestly, what sort of state are we in? Is this the Soviet Union? Are we heading towards the Soviet Union on the minister's watch?

Ms R. Saffioti: There is nothing wrong with the Soviet Union!

Mr M. McGowan: Not that there is anything wrong with it!

Mr T.K. WALDRON: The last part was quite humorous but—how do I put it?—completely wrong. The member knows that the licensed part of Parliament House is the bar, so fair enough.

Mr M. McGowan: I have seen people drinking in here.

Mr T.K. WALDRON: The provision refers to insulting, offensive and threatening language. The usual situation is that the licensee would only ever ask for a barring notice if that was happening in that threatening manner. As I said, the whole aim of this is to protect the public, the licensee and the person. The licensees support these notices. I agreed to delete "quarrelsome" because I had some issues with "quarrelsome", but I think —

Mr M. McGowan: But "quarrelsome" is more significant than "disorderly".

Mr T.K. WALDRON: I do not think it is.

Mr M. McGowan: Is the minister saying that "quarrelsome" is less significant than insulting language?

Mr T.K. WALDRON: Disorderly behaviour is an offence. Disorderly behaviour is already an offence under the Criminal Code act.

Mr M. McGowan: We should all be charged every day then!

Mr T.K. WALDRON: The police and the licensee would use their discretion. They would not ping a guy for swearing and saying "bloody" or something.

Mr P.B. Watson: If they don't like him, they would!

Mr T.K. WALDRON: The checks and balances for this are the fact that it must be considered by someone from the rank of commissioner to the lowest rank of inspector. I have great confidence in those people to make reasonable decisions. Members should remember that this is not a criminal offence. Whether a person is barred for one week or 12 months, it is not a criminal offence. As I said, this is to give these people some time on the sideline and protect the licensee. I think it is in order.

Mr P.B. WATSON: With the barring notice, could the minister clarify the criteria of detail required to be published by the Commissioner of Police? Where will the details of barred persons be published? Will the prescribed method of publication be distributed to all licensees in Western Australia? I am worried about how all the hotels, pubs and clubs will know who is barred. Will they be in trouble if these people go to those bars? How will it be determined that a licensee or its staff knew that a person was subject to a barring notice and allowed that person on to the premises in contravention of the notice? How will the publicans be protected in this?

Mr T.K. WALDRON: Can I get some clarification? I think I know what is going to happen here. All these things are covered in the amendments that I have on the notice paper. It seems that we will go through everything and then when we address each amendment, we will go through it all again. I will answer that question in full, but I think we should go through the amendments in this clause and then cover all that. Otherwise, I will answer all the member's questions, and an hour and half later we will do the amendments. I think the member for Collie–Preston probably agrees with me.

Mr M.P. MURRAY: Quite extensive discussions have certainly been had in this place and I have also met with many of the stakeholders on this issue. The stakeholders see the barring notice as quite a strong tool, but we maintain our earlier concerns about identifying people. Details may be put on Facebook, or some of those social websites that people use extensively these days, and are unable to be taken off. That could jeopardise a person's future job applications and those sorts of things. Having heard from some of my colleagues and spoken with them, we understand there are concerns about the misuse of information.

The use of a secure website has certainly gone a long way to addressing some of those concerns, but it is still a concern. I forget the figure that has been quoted as the number of people in the industry, but some leaks may get out. I have an amendment that really puts that into the hands of the owners, hoteliers and club managers, those sort of people, by saying that if the information starts to leak, there will be a problem and the clubs may also lose their barring notice. The concern coming from this place is that, through barring notices, people will be disadvantaged in another area. People might play up once or twice between the ages of 18 and 20 and then move on in their life, but be disadvantaged because of the social networking sites. I think that wraps it up.

Mr P.B. Watson: How will they get photos of people who do not have criminal records?

Mr M.P. MURRAY: The member has broken every camera that has been! How would he get one?

It is very difficult, and that information should not be passed on. I thank the minister for this, because in the first instance the bill proposed that photos and information could be posted or passed on to anywhere within the community. I found that quite wrong in that a person could be walking downtown and see his or her photo. That is not really what it is about. It is about trying to control the violent behaviour in our pubs and clubs.

Mr T.K. WALDRON: I thank the member. This debate will be adjourned in a minute because we have other business to attend to. I will cover everything when we come back. I would like some advice from you, Mr Acting Speaker. When we come back and go through the amendments in this clause, we will cover many of the issues that members have raised, some of which, such as photos, are covered in the amendment. The amendments will alleviate some of those issues, but not all of them. I will answer the other questions as we go through.

The ACTING SPEAKER (Mr J.M. Francis): My advice, minister, is that when we come back, the minister can withdraw his first amendment to clause 30 and then seek to move them all en bloc.

Mr T.K. WALDRON: I think that would be the best way to go. We can then go through them one by one; otherwise, we will have a repetitious debate on the same points.

Debate adjourned, pursuant to standing orders.