

LIQUOR CONTROL AMENDMENT BILL 2010

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 52: Section 109 amended —

Debate was interrupted after the amendment moved by Mr T.K. Waldron had been partly considered.

Mr T.K. WALDRON: I moved an amendment that deals with sly grogging. It makes two changes to the offence provision relating to licensees selling liquor for the purpose of sly grogging. The test has been changed from “suspects, or ought reasonably to suspect” to “believes, or ought reasonably to believe”. In addition, a provision has been added so that licensees can be charged for an offence only if they believe that the liquor will be onsold unlawfully and the purchaser does, in fact, unlawfully onsell the liquor. This is really the previous government’s amendment except that we have increased the threshold for the licensee’s offence so that the licensee, instead of “suspects”, “believes, or ought reasonably to believe”. An additional provision was added so that a licensee can be charged for an offence only if he believes that the liquor will be onsold unlawfully and the purchaser does in fact unlawfully onsell the liquor, so we have lifted that threshold. As I said before, sly grogging is a big issue for us in many areas and this provision is to tighten up those laws.

Ms M.M. QUIRK: The minister’s amendment will change the test from “suspect” to “believe”. “Reasonably suspect” is, if we like, a legal term, and I think what that term means is well known, “believe” I think less so. Can the minister tell us what criteria constitute belief? Is that an objective or a subjective standard?

Mr T.K. WALDRON: I took my advice from parliamentary counsel on this. I am not a lawyer, but in layman’s terms a person can suspect someone, and if he suspects, he does not really know. If a person believes, he has a reason to believe, so there would be something that would give that person a reason to believe. Of course, the threshold with that is that the purchaser does in fact unlawfully sell the liquor, which raises the threshold again. Therefore, it is what was proposed before; I have just put that wording in to make it certain.

Ms M.M. QUIRK: We might need to have some scenarios because I am having a bit of trouble grasping this concept. For example, if someone were to roll up from a remote Aboriginal community with a ute and he was to stack it full of slabs of full-strength beer, presumably the seller would certainly have the suspicion—I do not know whether he would have a belief—that that bloke was not going to drink that entire uteload of beer.

Mr T.K. Waldron: That’s right; that’s the point.

Ms M.M. QUIRK: So if it is a suspicion but not a belief, what elevates it to a belief?

Mr T.K. WALDRON: It is elevated to a belief when the licensee actually believes that the purchaser is going to unlawfully onsell the liquor. In some cases, particularly in our smaller communities et cetera, publicans get to know their clients and they get to know what is happening in their community. Therefore, rather than simply suspecting that he might, this provides that he must believe, and in some cases he would believe. However, that would have to be proved and the purchaser would then have to go and onsell that liquor.

Ms M.M. QUIRK: The purchaser would then have to onsell the liquor, so any prosecution case would need to establish that onselling of the liquor occurred, possibly somewhere else, and it would have to establish either subjective facts or objective facts. In other words, did the person actually think that, or did this, this and this occur and blind Freddy would know that that was the case? Therefore, I am trying to work out whether it is subjective. Do we have to prove that that particular person thought a particular thing, or does the prosecution prove that the bloke came once a week, he had a ute full of grog—a whole lot of objective facts—or does he have to say that the bloke told him he was going to onsell the liquor?

Mr T.K. Waldron: No.

Ms M.M. QUIRK: That is what I am having trouble grasping. What would point to a belief, or does a belief have to be what the person actually believes?

Mr T.K. WALDRON: I think that is for the court to determine; I think that is quite plain. It has to be proved to the court that the licensee believed and that the purchaser did in fact unlawfully sell the liquor. I am not the court.

Ms M.M. QUIRK: Sorry to absolutely flog this point, but I really am having a lot of trouble. I am a former prosecutor and from what the minister has told me I would not know what I would need to do to compile a brief against someone who sells —

Mr T.K. Waldron: You have to prove that they believe.

Ms M.M. QUIRK: I am asking: how do we prove that? In other cases that I have been involved in, there are a number of objective circumstances, this and this and this happened, so the bloke must have known. That is how we would normally prove that. We prove all the objective facts—he arrived with a ute, he asked for a full load of beer, he came every three days, he paid with cash. In cases generally we prove a set of objective circumstances that makes the court draw the inescapable conclusion that the seller must have had that belief, or do we have to prove that that particular person had a specific thought process? Does the minister understand the distinction? One proves external facts that would tend to impute that that person had that belief —

Mr T.K. Waldron: I don't believe that. I believe that you have to prove that the person—the publican or whoever—in charge actually believed. I am not a lawyer, and I don't think it's for me to actually pre-empt what a court would do. I'm not in the position to do that.

Ms M.M. QUIRK: The problem is that this lack of clarity may well mean that the court looks to what the minister has said to interpret that section; therefore, that is why I am, if we like, labouring the point. I want to know, short of the person telling the seller that he was going to onsell the liquor, what other sorts of things the minister would expect the prosecution to need to make a successful prosecution?

Dr J.M. Woollard: Member for Girrawheen, while you're on your feet —

Ms M.M. QUIRK: I am not the minister!

Dr J.M. Woollard: If you would just take an interjection, surely what you have just asked the minister, doesn't that in fact assist the minister? You have just given this legislation that broader scope. By asking that, you have given both the factual scenario, plus the minister's interpretation; or the minister has also given his interpretation of this, which is that it is not just the factual description that you have provided that you would use as a prosecutor or a defender—I was not sure which you said you would be arguing this as in court. But it is not just those facts; the minister has said that as this is fairly new legislation, he does not, at this point, want to state that it is black and white, but he wants, at this point in time, to leave it slightly more open. What you've done is actually made it broader, which I think is probably a better thing, isn't it?

Ms M.M. QUIRK: With all due respect, member, whatever Her Majesty's opposition thinks about a particular thing is not an extrinsic aid for interpretation by the courts. The only words that the courts can look at are the minister's—the minister is the one who introduced the Liquor Control Amendment Bill 2010. He needs to be able to say to the court that it is a subjective belief on behalf of the seller, or that that belief can be inferred by the objective facts.

Mr T.K. Waldron: In all honesty, I am no lawyer; I don't think it's my role to be trying to pre-guess which way the courts will look at it.

Ms M.M. QUIRK: With all due respect, minister, it should be sufficiently clear.

Mr T.K. Waldron: No; I think the word “believe” is clear, and obviously there has been, that I know of—I am not a lawyer like you—good legal precedent.

Ms M.M. QUIRK: With all due respect, I know parliamentary counsel thinks it is infallible and right all the time, but—guess what—it is not. Maybe while the minister is dealing with some of the other queries from my colleagues, one of his advisers could pull out the advice of parliamentary counsel for why this wording has been changed.

Mr T.K. WALDRON: I can tell the member why it has been changed. It was changed to raise the threshold. Remember that this is supported by the Australian Hotels Association, except this clause.

Ms M.M. Quirk: I bet it is!

Mr T.K. WALDRON: It has been changed to show that instead of it being a suspicion, it is a belief. To me, that is quite clear, and I am confident that the advice from parliamentary counsel will be interpreted properly by the law courts—that is what they are there for.

Mr R.F. Johnson: It's the same as what you would have done if you were in government; you would have taken advice from parliamentary counsel.

Ms M.M. QUIRK: Can I just say that it is my view that if the minister is really serious about cracking down on sly grogging, there is the potential to get fewer prosecutions with the proposed wording than there would have been under the existing wording.

Mr T.K. Waldron: The intention was to really get the ones who are dinkum about it, not to catch someone offhand.

Dr J.M. WOOLLARD: I think that changing the wording from “suspects” to “believes” does what the minister said; it is a tighter form of wording. I believe it fits with what the member for Girrawheen said in that it relies more on there being some facts. But as the minister said, it is not just a case of the facts as the member for Girrawheen put forward; it could be much broader than the facts she put forward—I am not sure what they might be. I am very pleased to see this tightened in the Liquor Control Amendment Bill 2010 because, coming back to the trip that the Education and Health Standing Committee took up north, there really is a serious problem with people going to liquor outlets and buying alcohol, even in some places where there were restrictions on how much they could buy. If they could buy only a certain amount of liquor depending on how many people were in the van, they would park up and get more people to jump in the van so that they could go to a liquor outlet and purchase more alcohol, and then drop people off and drive off. I think any measures that this bill introduces to monitor the amount of alcohol being sold and encompass any onselling of that alcohol are good measures to introduce into the act.

Mr P.B. WATSON: Minister, I am a bit about concerned about the sly grogging, because when we were up north, the police’s main concern was that they would stop a car or a ute with 20 cartons in it, but would find that the people who had bought it were pretty clever because they put flexicards on each carton to show that that person had bought that carton, and so the police could not do anything about it. I was interested in how they could get that alcohol from the licensee in the first place. They go and say, “We’ve got 20 credit cards”, but they are not using those credit cards, and then they go back and do the sly grog. When we were up north, they were saying that most of the sly grogging was coming from the Northern Territory; it was not coming from Western Australia.

Mr T.K. Waldron: They’ll get picked up under this legislation; that is what it is about.

Mr P.B. WATSON: It is very hard for a publican or someone at a bottle shop if someone comes in for 20 cartons and the person has, say, 10 or 11 cards.

Mr T.K. Waldron: Member, it is a fair point, and that is why we have this in the bill, but we have also increased the threshold for that very reason. Thanks for that.

Mr M.P. MURRAY: On the same line, if people came in with those credit cards, as the member for Albany mentioned, and they are acting on someone else’s behalf because they might have only one vehicle in that community, they would not be sly grogging as such. Does the minister understand where I am coming from?

Mr T.K. Waldron: I do.

Mr M.P. MURRAY: That could also happen in, say, my community —

Mr T.K. Waldron: As long as they don’t onsell it, they are fine.

Mr M.P. MURRAY: Yes, they are not actually onselling it; they are collecting it for someone else.

Mr T.K. Waldron: They are not onselling, so it is not an offence. If the publican believes they are, then he doesn’t sell it to them, and that is the right of the publican.

Mr M.P. MURRAY: I can give another example of some of the socialising habits in country towns. One guy might be sober out at a bush party and they will send a ute in to get supplies. They might be out there for three or four days, camping around the backwaters of the weir, out of everyone’s road, and they would send a ute into town. In that case, there would have been a cash whip-round, generally—it would not be credit cards because the licensee would probably be a bit stricter about the signing of the cards—and the person would get sent in with a bundle of cash to buy 20 cartons, or to try to. I am just concerned about people being caught up in that. I certainly support where the government is going, but I am just trying to get some clarity on that sort of issue.

Mr T.K. WALDRON: As I understand it, the licensee obviously has to make a judgement call, but if someone gives a person money to buy a beer to take back home or back to a party, that is not onselling and so that would not be an offence. If someone was charged with that, the court would decide.

Dr J.M. WOOLLARD: I have a question for the minister. I am not sure whether the minister’s advisers sitting at the table with him have law degrees; if not, we have the member for Girrawheen and the member for Rockingham—although he is not sitting in his seat—as well as the member for Mount Lawley in this place. I have a bit of a concern, minister, about this clause. It has been brought to my attention that the change in the wording in the original bill before the house has been from “reasonably suspects” to “reasonably believes”, and I am not sure which is the higher bar.

Mr T.K. Waldron: “Believe” is, and that is based on advice we have received.

Mr Terry Waldron; Ms Margaret Quirk; Dr Janet Woollard; Mr Mick Murray

Dr J.M. WOOLLARD: If “believe” is the high bar, does that then mean that it is going to be harder to catch and prosecute the people actually buying and onselling the alcohol?

Mr T.K. Waldron: No, it has nothing to do with buying and selling; this has to do with the licensee—the person providing the liquor from the hotel. There is a different offence for people onselling.

Dr J.M. WOOLLARD: It states —

- (a) the seller sells liquor to another person ... whom the seller reasonably believes, or ought reasonably to believe, intends to sell the liquor ...

Mr T.K. Waldron: The licensee has a reason to believe that that person intends to sell it, and then the person has to sell it. There is a bit of protection there.

Ms M.M. Quirk: It is the owner of the grog shop selling the grog.

Dr J.M. WOOLLARD: I was a bit worried that it was going to be harder to catch the people who do the wrong thing.

Mr T.K. Waldron: No, it will not affect them, member. The offence for that person already exists and is not being changed.

Dr J.M. WOOLLARD: Will it make it more difficult to catch the licensee selling to someone he should not be selling to?

Mr T.K. Waldron: No, not necessarily. We just want to make sure that we give the licensee some protection. We want to catch the person who is deliberately doing this. We do not want to catch someone who does not believe and who sells it and then someone onells it. It is just a safety mechanism.

Dr J.M. WOOLLARD: But it will give more protection to the licensee.

Mr T.K. Waldron: Yes, you could say that, but I think it raises that threshold. It is a fairer rule for the licensee. We are targeting the people who intentionally do this, not someone who unintentionally does it. In the end, the court will make the decision, not me.

Dr J.M. WOOLLARD: We need to be putting in place protective mechanisms for the people at the end of the line.

Mr T.K. Waldron: Member, I have taken really good advice on this. This is for the licensee, not the person onselling. I believe that the word “believes” is the right word.

Dr J.M. WOOLLARD: I do not want to hold up proceedings in the chamber. Obviously, I need to do a bit more homework on this clause, and then I will potentially lobby the minister and a few members of the upper house a bit more.

Mr T.K. Waldron: There is no offence at the moment; we are introducing this offence.

Dr J.M. WOOLLARD: I am very pleased that the minister is introducing it, but I wonder whether it should be —

Mr T.K. Waldron: No; I am happy with that.

Ms M.M. QUIRK: Can I follow up on something that the member for Albany discussed earlier? A lot of the grog is brought in from the Northern Territory and is then onsold in Western Australia. In terms of the culpability of the licensee, if the licensee is in Victoria and commits an offence in Western Australia, does this particular offence provision have extraterritorial effect? Can someone be prosecuted for forming the belief in the Northern Territory?

Mr T.K. Waldron: No, it does not.

Ms M.M. QUIRK: This provision does not assist us with that situation?

Mr T.K. Waldron: I am advised that it does not.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 53 to 60 put and passed.

Clause 61: Section 119A replaced —

Mr M.P. MURRAY: I could be totally in the wrong paddock but I will try. Proposed section 119A(1) states in part —

non-liquor business on licensed premises means a business, other than a business conducted under a licence or a prescribed business, conducted on or from licensed premises.

I have had representation from members of the poker players association who have had some problems getting licences on those premises. Will this provision pick up that issue?

Mr T.K. Waldron: No, it will not. That is a different issue; that is a gambling issue.

Mr M.P. MURRAY: It comes under the gambling provisions, not the liquor provisions. They were quite adamant that it would come under the liquor provisions.

Mr T.K. Waldron: No; I have advice.

Mr M.P. MURRAY: I just thought I would raise that issue.

Clause put and passed.

Clauses 62 to 64 put and passed.

Clause 65: Section 155 amended —

Mr M.P. MURRAY: Proposed section 155(7)(b)(ii) states —

the member of the Police Force believes on reasonable grounds that the person has caused, is causing or is likely to cause, undue offence, annoyance, disturbance or inconvenience to other persons in the vicinity.

This is about confiscating liquor. One of the questions that I have been asked is: what will happen to that confiscated liquor if it is a disputed confiscation? Let us say that someone happened to be walking back from the bottle shop through an area. It may sound ridiculous but there is some conflict. He could say that it was his dad's liquor.

Mr T.K. Waldron: Member, it would be confiscated and disposed of as soon as possible.

Mr M.P. MURRAY: So people have no right of appeal?

Mr T.K. Waldron: No.

Mr M.P. MURRAY: Does that not go against a sense of natural justice?

Mr T.K. Waldron: People have a right of appeal against the offence.

Mr M.P. MURRAY: But the way I see that is that the Christmas party will be pretty good down at the police station!

Mr T.K. Waldron: We have added a provision that this will apply only if the police are satisfied that a person has or is likely to cause undue offence, annoyance, disturbance —

Mr M.P. MURRAY: Sure.

Mr T.K. Waldron: That is an extra safety net.

Mr M.P. MURRAY: That is the safety valve on it, and I understand that. Generally, what happens in these cases in which liquor is involved is that it becomes an argument of, "That is mine and that is yours." Could there be a case—again, this may seem a bit strange—for a person to claim compensation for a bottle of, say, whisky that may be worth \$60 or \$70? I want it to be fair. The question has been asked of me.

Mr T.K. WALDRON: There were some nasty incidents at Mullaloo and Scarborough, and this provision is just trying to give the police an opportunity to take action. The police will apply their normal discretion when doing that. If people transgress, their liquor will be disposed of. I am not aware of any compensation or whether they could take action. I will find that out; and, if anything needs to be added, we will do that in the other place.

Mr M.P. MURRAY: Further to that, it is something that we see in the Australian way, but not always in a good way. We see young people over 18 walking down the footpath with an esky on wheels. It is very easy to say that they are going to do I do not know what, but they could be going to do all sorts of things.

Mr T.K. Waldron: But they have to be drinking. They have to have it open and be drinking it. They can wheel their esky. They can buy some from the shop and walk across the park and take it to their car, but if they go and drink —

Mr M.P. MURRAY: The minister is right. I probably did not explain it very well. If a group of people are walking down the footpath and someone on the other side has a stubby and is yahooing —

Mr T.K. Waldron: It has to be the person with the alcohol who is drinking.

Mr M.P. MURRAY: If a person is quick enough, he can give the handle of the esky to someone else. What I am trying to get at is if one person from the group is drinking, the police can deem that the group is going somewhere and the alcohol can be confiscated. We see that happen all the time. I am just being realistic about what we see.

Mr T.K. WALDRON: If the member and I were walking down a street and I was drinking and the member was carrying a carton of beer, I could be charged for drinking but the carton could not be confiscated, unless I was carrying it and drinking.

Ms M.M. QUIRK: This clause effectively applies to people who buy grog from a licensed premises and then go somewhere.

Mr T.K. Waldron: They do not have to have bought it. They might have brought the grog from home and are in a public place.

Ms M.M. QUIRK: Okay. Where does it say in the bill “public place”?

Mr T.K. Waldron: They have to be drinking unlawfully.

Ms M.M. QUIRK: So that is in a public place. Does any other conduct constitute drinking unlawfully on a park or reserve?

Mr T.K. Waldron: That occurs when it is done without the permission of the local government, but local governments can give people permission to do that.

Ms M.M. QUIRK: Someone is drinking unlawfully if he is drinking on the street or in a park or reserve without council permission. As I understand it, this provision is based on a provision that applies to juveniles. Is the minister aware of that? Currently the police can only seize liquor from juveniles.

Mr T.K. Waldron: Juveniles cannot be in possession of liquor.

Ms M.M. QUIRK: The police have the power to tip out the grog they find in the possession of juveniles, so this clause extends that provision to adults.

Mr T.K. Waldron: Yes, but the drinking test applies only to adults because juveniles cannot be in the possession of liquor in a public place. Adults have to be drinking the liquor in a public place to lose their grog.

Ms M.M. QUIRK: Is that the only thing an adult must do in addition to causing undue offence, annoyance, disturbance or inconvenience?

Mr T.K. Waldron: Yes.

Ms M.M. QUIRK: Is it just those two things?

Mr T.K. Waldron: Yes.

Ms M.M. QUIRK: If a person is drinking but is not causing, or is not likely to cause, undue offence, annoyance, disturbance or inconvenience, will the person be okay?

Mr T.K. Waldron: All the police can do in those circumstances is tip out what the person is drinking, just as they can do now. If I am drinking unlawfully in a public place, the police can tell me to tip it out, but they cannot take my other liquor from me.

Ms M.M. QUIRK: Is it only if the people are misbehaving that the police can seize their unopened liquor?

Mr T.K. Waldron: Yes.

Ms M.M. QUIRK: It is not unknown for a person to fail the “attitude test”, in the vernacular of the police. Let us say that a person is drinking in a public place but is not acting in a way that causes, or is likely to cause, undue offence, annoyance, disturbance or inconvenience of people in the person’s vicinity. The police have the right to tell that person to get rid of the grog that he is drinking but, at that stage, the police do not have the right to seize the unopened liquor.

Mr T.K. Waldron: That is right.

Ms M.M. QUIRK: If the person then says to the police, after being asked to pour out the liquor he is drinking, “Get stuffed”, “Piss off”, or, “Go away, pig”, or something that discloses a lack of courtesy, shall we say, that is known in the vernacular as “failing the attitude test”, in this case the police might say, “I believe you’re acting in a way that is causing a disturbance, annoyance or inconvenience to other people in the vicinity.”

Mr T.K. Waldron: The police would use their discretion, just as they do in hundreds of other cases. If someone chose to take that course of action, it would be a damn good lesson for them. I do not have a problem with that.

Ms M.M. QUIRK: A damn good lesson for the person because he —

Mr T.K. Waldron: It would depend. If the person was carrying on and was abusive and threatening, that is what it is for; the police would use their discretion.

Mr R.F. Johnson: You won't condone that, surely.

Ms M.M. QUIRK: What I condone is the proper use of police powers. I do not condone police improperly using their powers to be vindictive. This is a roundabout way—I have just 48 seconds left—of saying that the undue offence could be against the officer himself and does not have to be broader. Perhaps the minister can give us a scenario of a person causing an undue offence, annoyance, disturbance or inconvenience.

Mr T.K. Waldron: That is for the courts to do, not me.

Ms M.M. QUIRK: No, it is not.

Mr M.P. MURRAY: Again, I am not trying to labour this point, but I was appalled last year during schoolies week—I wonder whether this is picked up in this legislation—when parents were claiming that the alcohol that was confiscated was their own when, in fact, it belonged to their children. The minister is saying that the liquor will be totally confiscated. When some cars were pulled up as they were travelling south last year, some of them had loads of liquor in the back. This is nearly a case of onselling alcohol, although it is not exactly the same. The parents were condoning the use of liquor and dropping it off to motel rooms so that the underage people could have a drink. Is that matter addressed in this legislation? A problem with underage drinking in some venues is that the alcohol has been delivered to the motel by a mum or dad, as surprising as that may be. However, the police do not consider it to be a great issue, even though it is illegal, because the mums and dads have given the underage people the alcohol. Does this clause pick up that at all?

Mr T.K. Waldron: It does not. Secondary supply is problematic in all jurisdictions around Australia. The kids who got picked up last year travelling in a car containing alcohol were juveniles. Juveniles who are in the possession of alcohol in a public place, including in a car, are breaking the law. That is what happened then. This clause does not cover the issue of the parents supplying the liquor. Parents must take responsibility, like we all must.

Mr M.P. MURRAY: They certainly should, but the trouble is that one parent may not be as responsible as another.

Mr T.K. Waldron: This clause does not cover that. I am happy to have that discussion, but we would have to go into that. It does not apply anywhere else. It is problematic and I am happy to discuss it further.

Mr M.P. MURRAY: It is my understanding that, in some cases, the police took the alcohol back to the police station and the police used their discretion and allowed the parents to reclaim it later on. Therefore, the kids did not lose it. There was no penalty other than the party being a bit dry. It is awful to think that some parents are allowing girls as young as 14, 16 or 18 years old to drink sweet alcoholic drinks. That concerns me more than some of the other big issues.

Dr J.M. WOOLLARD: Proposed section 155(7) states —

If a person is contravening section 119 a member of the Police Force may seize a container of liquor in the person's possession if —

(a) the container is opened;

Section 119 is headed "Limitations as to liquor on unlicensed premises etc." I think section 119(1) applies to proposed section 155. Section 119(1) states —

A person who consumes liquor in any place or on any premises, including any park or reserve, without the consent of the occupier, or of the person or authority having control, of that place or those premises commits an offence.

This clause is not about a person consuming liquor without the consent of the occupier.

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

Dr J.M. WOOLLARD: How?

Mr T.K. Waldron: A person must have the consent of the local government to drink alcohol in a local government park.

Dr J.M. WOOLLARD: Where will proposed section 155(7) apply with regard to an unopened bottle?

Mr T.K. Waldron: In a public place or any other place set out in section 119. I think that is the clinical answer. That includes parks, reserves and any public roadway.

Dr J.M. WOOLLARD: That is the provision I just read out.

Mr T.K. Waldron: Yes.

Dr J.M. WOOLLARD: It says “a person who consumes liquor in any place or on any premises, including any park or reserve, without the consent of the occupier”.

Mr T.K. Waldron: That is right. That is what I have just said. A local government might give consent to drink in its local park, and then it is not an offence. That is what this is saying.

Dr J.M. WOOLLARD: So this proposed new section will not apply all the time? Normally, people cannot drink in a park.

Mr T.K. Waldron: It will apply in a public place. It is an offence to drink in a public place, such as a park, unless the local government has declared that people can drink in that place for some reason, such as a wedding or other special day.

Dr J.M. WOOLLARD: So this new section will apply just for special occasions?

Mr T.K. Waldron: No. It will apply all the time to a public place. What we are saying is that a local government has the authority to make a declaration for a period that will allow people to drink in a public place such as a park. The local government may grant a permit to do that. However, if there is no permit, this will apply.

Dr J.M. WOOLLARD: So this will apply for 365 days of the year, unless a permit has been given for a certain day?

Mr T.K. Waldron: Yes.

Dr J.M. WOOLLARD: I thank the minister.

Ms M.M. QUIRK: I understand that the minister does not want to be put on the spot, and he has quite rightly said that he is not a lawyer and he will wait for the courts to decide these matters. The problem I have is that the police and the liquor licensing inspectors will need to enforce these matters. It is all very well for the minister to say he will wait for precedents. But how will the police and the inspectors be able to know and get some guidance about how they are supposed to enforce this?

Mr T.K. WALDRON: This proposed section provides that the police must be satisfied that the person has caused, is causing or is likely to cause, undue offence, annoyance, disturbance or inconvenience. I will give the member an example. A situation occurred at Mullaloo Beach, where people were sitting in a public place, and there was a group drinking alcohol and causing annoyance, disturbance or inconvenience. Obviously the police, as they do in all their work, would be advised about what is the best way of dealing with such a situation. I think that is what this sets out.

Ms M.M. QUIRK: I am embarrassed to use this example, because it is something that the member for Mindarie would be proud of, minister. I give the example of a person who has had a bit to drink and who has to get some grog for an important family occasion the next day. So, quite rightly, he decides not to get into his car but to walk to his local Dan Murphy's to get his supplies for the party the next day. So he walks to Dan Murphy's, and he gets a carton of Grange. He then thinks, “This has been thirsty work, this walking to the grog shop; I'll get myself a stubby to drink on the way home.”

Mr T.K. Waldron: Then he is breaking the law.

Ms M.M. QUIRK: Yes. He gets himself a stubby, and he then proceeds in an orderly fashion in an easterly direction, as the police would say, towards home on the footpath. He may be singing a little song, but he is by and large not causing any affront. He is drinking that beer in a public place, which I concede is breaking the law. The police then come up to him and say, “You're breaking the law, because you're drinking a stubby”, and he says, “Get stuffed; what business is it of yours?”, or something very uncourteous. The police officer has had a bad day—his wife has left him, the cat has died, or whatever—and he is not feeling very full of the milk of human kindness, so what does he do? He seizes the carton of Grange, as he is required to do under the act, and disposes of it as soon as practicable. That could happen under this legislation.

Mr T.K. WALDRON: Yes, that could happen. However, I would like to think that the police officer, if the person was not being threatening, would first tip out what the guy had been drinking, because he was breaking the law, and, if the guy had made some comments et cetera, the police officer would use his discretion as to whether it meets this or it does not and would make that decision. The police do that in everyday policing. When the member gets picked up for speeding, the police do that.

Ms M.M. Quirk: I never get picked up for speeding anymore, minister.

Mr T.K. WALDRON: I cannot explain it any more than that. I think that is quite clear.

Ms M.M. QUIRK: The problem, minister—I will leave it at this—is that there needs to be some proviso about who the undue offence, annoyance, disturbance or inconvenience is being caused to. I frankly think it needs to be broader than the police officer. I do not think that the wording of this new section makes that readily apparent.

Mr M.P. MURRAY: This is an age-old cookie, I suppose, but I want to talk about the sky show. Can the minister explain how these laws will impact on the community at an event such as the sky show?

Mr T.K. Waldron: Once this becomes law, it will apply.

Mr M.P. MURRAY: The minister was confused about this last year, along with many others, because people had different opinions along the way. I think the Minister for Police had some confusion as well.

Mr T.K. Waldron: This will clarify it, because this will be the law.

Mr R.F. Johnson: This will make it much simpler.

Mr T.K. Waldron: And people will now have to be misbehaving before the police can take their unopened alcohol off them, whereas last year —

Ms M.M. Quirk: No. They have to create annoyance, which might not be the same as misbehaving.

Mr M.P. MURRAY: I want to know how this will work, so that I will have an answer if people ask me, as they did last year—how was the City of South Perth able to get \$250 000 to help people not to drink in a non-drinking area? It was very confusing to try to get that answer out. A grant of \$250 000 was given by the government to the South Perth council.

Mr T.K. Waldron: It would have used its local government by-laws, as I was saying.

Mr M.P. MURRAY: That was in a non-drinking area, yet the council was given money to help control that.

Mr T.K. Waldron: I would need to look into that.

Mr M.P. MURRAY: The minister is saying that if a person is sitting under a tree and drinking—I agree with what the minister has said—we should leave that person alone. But the other side of it is if someone is kicking a football and he runs backwards and steps on a toddler and there is an argument, that person is generally the person who will be penalised, even though there was no intent or anything like that, because it becomes, “Get away; you have been drinking”, even though it was just a glass of wine. That is the confusion that I was hoping to have clarified. I understand where the minister is coming from, but that is not clarifying that confusion.

Mr T.K. WALDRON: We cannot make perfect laws for every little thing. I think this is quite clear. This will actually tighten the law for the sky show. Whereas previously the police had the power to confiscate and tip out a person’s alcohol, now the person will have to be causing undue offence, annoyance, disturbance or inconvenience. That is what will apply if this becomes law. If it does not become law, we will have to declare an area a special area, and the old law will apply.

Dr J.M. WOOLLARD: I want to give some reassurance to the member for Girrawheen on this proposed new section. It says “undue offence, annoyance, disturbance or inconvenience to other persons in the vicinity”. So it would not, member for Girrawheen, be just one person who might be having an off day. It says “other persons”. Therefore, the police officer would need to be assured that several people were going to be disturbed by the person’s actions.

Clause put and passed.

Clauses 66 to 69 put and passed.

New part 6 —

Mr T.K. WALDRON: I move —

Page 57, after the Table — To insert —

Part 6 — *Criminal Investigation (Identifying People Act) 2002* amended

70. Act amended

This Part amends the *Criminal Investigation (Identifying People) Act 2002*.

71. Section 73 amended

Before section 73(1) insert —

(nb) for the purposes of the *Liquor Control Act 1988* section 115AC or 152K;

Mr Terry Waldron; Ms Margaret Quirk; Dr Janet Woollard; Mr Mick Murray

These are consequential amendments that have been made to the Criminal Investigation (Identifying People) Act 2002 to affirm the powers conferred in the Liquor Control Act 1988 to publish details of barring notices and prohibition orders. The Criminal Investigation Act prevents the publication of information, including photographs held by the police. This amendment applies for the exemption relating to the information published under this act. Under this act, of course—we have already debated this—it is restricted.

Ms M.M. QUIRK: Can I just clarify that this amendment deals with the publication of details, which are name, address and photograph?

Mr T.K. Waldron: It is name, suburb and photograph. That is the member for Mindarie's amendment.

Ms M.M. QUIRK: In terms of other things that might be secured under the Criminal Investigation (Identifying People) Act, the amendment does not include fingerprints, DNA details or anything like that? Okay, I am just checking.

New part put and passed.

Title put and passed.