

MISUSE OF DRUGS AMENDMENT BILL 2011

Committee

Resumed from 20 October. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Peter Collier (Minister for Energy) in charge of the bill.

Clause 9: Section 34 amended —

Progress was reported on the following amendments moved by Hon Kate Doust —

Page 6, line 22 — To delete “a first” and insert —

an

Page 7, lines 4 to 9 — To delete the lines.

Hon PETER COLLIER: I have a couple of responses to the questions that were asked by Hon Kate Doust that I would like to provide now. The member commented on the capacity of the Environmental Protection Authority Act to require sites to be cleaned up. The advice from the Department of Environment and Conservation is that until now it has not actively sought to use its powers under the Environmental Protection Act but will now look to issue relevant notices when necessary. Generally, it would be the responsibility of the homeowner to render the house suitable for habitation. Sometimes this can be an issue for rental properties and also has been an issue for the Department of Housing at times. It is the policy of Housing to seek to recover the cost of the clean-up from tenants. The department is pursuing \$100 000 from one tenant as a result of structural damage to a property after a clandestine laboratory explosion. The department is also planning to recover the cost of decontamination from another of its properties at a cost of \$8 800. The member also queried whether any other jurisdictions have mandatory terms of imprisonment for drug offences involving children. The answer is no. For the information of members, the attached document outlines the specific drug offences involving children that have been enacted elsewhere in Australia. I seek leave to table that document.

Leave granted. [See paper 4004.]

Hon KATE DOUST: On the basis of that answer, the minister just advised us that no other jurisdiction has mandatory sentencing of people who either sell cannabis to children or in whose locale of a drug laboratory children are found. We talked previously when debating these amendments about the disparity between the two types of product that evolves from this type of drug production. Clan labs are highly noxious and explosive in nature. That is a dangerous environment in which there is the potential for an explosion and for fumes to be emitted, unlike the environment in which marijuana plants are grown. It is interesting to note that no other state has tackled this. I appreciate that the minister cannot answer this because he is not the responsible minister, but it is interesting that this government has taken the position that both those types of drug production will be treated the same. When I think back to the media that led to this legislation, it was all about clandestine laboratories and the danger to children who were found in clan labs. No-one disputes the need to address those issues and the damage and severity of all those problems. The problem is that cannabis has been linked to this legislation. What research did the government do to reach its decision to link both of these events and have individuals incur the penalty of mandatory sentencing in that situation?

Hon PETER COLLIER: We make no apology for making this harsh legislation and for sending, as I have said before, an unambiguous message. The cultivation of drugs in itself brings with it inherent dangers, just as the use of clan labs creates a real danger; therefore, I guess, if anything, Western Australia is leading the way. I appreciate that the honourable member acknowledges the negative aspects of any form of drug usage or clan lab usage in society. As I said, it is an election commitment that we have a hard-on-drugs approach towards any form of the cultivation, manufacture or distribution of drugs and this legislation falls in line with exactly that approach.

Hon GIZ WATSON: Perhaps I am not clear what the danger is of growing a marijuana plant in a back garden. Could the minister explain how that is inherently dangerous? I understand it is dangerous to smoke the product, but I do not see how growing it in a back garden is dangerous.

Hon PETER COLLIER: I understand that and I think we could ask what the difference is between a marijuana plant and a geranium. A geranium is —

Hon Giz Watson: I suggest that a rose might be more dangerous.

Hon PETER COLLIER: A rose, potentially, but people cannot smoke a rose—not that I am aware of—but they can smoke marijuana. As someone who has never had a drug in his life, I could not say. I have never ever had a drug of any shape or form—ever. I proudly stand by that, I can assure members. Having said that, cannabis use

is against the law; it is illegal. Yes, I appreciate the fact that I am not going to convince Hon Giz Watson of the fact that having a single cannabis plant in the backyard is necessarily as dangerous as having a clan lab, and that is true. But potentially what could happen as a result of that cannabis use, its implications for the future from the future use of a 12, 13, 14 or 15-year-old child are potentially profound. It is in essence against the law and that is what needs to be remembered.

Hon KATE DOUST: I think it is quite interesting, so let us talk about dangerous plants in the garden.

Hon Alison Xamon interjected.

Hon KATE DOUST: I am just going to get to that; the honourable member is jumping the gun. I do not know how dangerous it is if a child pulls a leaf off a marijuana plant growing in a backyard and chews on it. I do not know; I have no idea and I would like the minister to explain that. But I do know that a range of other plants that are incredibly noxious and highly toxic to children are freely available in gardens. I will start with oleander because that is the big one; it is very toxic to children. How do we deal with that? I would have thought that was a far more dangerous plant for children to be around, or lantana, which is another one.

Hon Alison Xamon interjected.

Hon KATE DOUST: Okay. I just got the Leader of the Opposition to google me a few others. I have not heard of some of these plants, but I certainly know about oleander and lantana. There are dangerous plants such as castor bean, deadly nightshade, which is a cousin of our humble potato, rosary pea and water hemlock. These plants are listed as highly toxic, but people have them in their gardens because they are highly attractive looking plants and are easy to grow. In fact, some of these plants, such as oleander and lantana, even survive people like me who have black thumbs. They grow everywhere and they are easy enough for kids to get to. I would have actually thought those types of plants should be on a do-not-have list for gardens.

Hon Giz Watson: Chilli.

Hon KATE DOUST: Chilli is another example. Therefore, a whole range of plants are —

Hon Norman Moore: The bill is about drugs, not —

Hon KATE DOUST: Chilli, honourable member, can be used in that capacity and can give people a real buzz.

There is a range of other examples of highly toxic plants that grow in everyday gardens where children are playing. As we all know, as kids grow they like to pull things off and stick them in their mouth or their nose or wherever because that is how they experiment. Therefore, I want to know why a marijuana leaf growing on a plant in the backyard in its natural form is more dangerous than lantana or oleander and why that requires mandatory sentencing.

Hon PETER COLLIER: I guess that once again the twain are not going to meet on this one. Extremes do occur in the cultivation of marijuana plants and marijuana use—I am sure Hon Giz Watson will be aware of this—in that some people take great pride in cultivating their little plot of marijuana plants and have mantraps with nails around them and barbed wire et cetera, so, yes, if we are going to go to that extreme, that is an issue.

Hon Kate Doust: It's highly unlikely that children will be there.

Hon PETER COLLIER: Let me finish.

Hon Giz Watson interjected.

Hon PETER COLLIER: Wait on! That is the extreme end of the spectrum—right? I understand that the members are not talking about that; they are talking about cannabis. I say to both honourable members, please rest assured that we will not embrace chillies, roses and all the rest of those plants and make it mandatory that they be included in the legislation. That is not the point of the exercise. The point is that we are dealing with an illegal drug, which is cannabis, that has significant harmful effects on people, particularly juveniles. It is an addictive drug. It is something that is illegal within our community and therefore there is a huge distinction, a huge void, between chillies and roses compared with marijuana. Marijuana is an illegal drug and that is why it falls within the guise of this legislation.

Hon GIZ WATSON: I would assume, minister, that setting a mantrap is an offence somewhere else and I think it is a bit confusing to try to put two things into one —

Hon Peter Collier: That was an example.

Hon GIZ WATSON: But it is an example of an illegal activity, regardless of whatever anybody sets a trap for. Somebody might set up a trap like that in their back garden because they do not like the neighbour's cat or they think somebody is going to burgle their house —

Hon Peter Collier: But cannabis is illegal; that's what you need to remember.

Hon Peter Collier; Hon Kate Doust; Hon Giz Watson; Hon Col Holt

Hon GIZ WATSON: I understand the policy position is that cannabis is illegal, but this bill is about imposing very high penalties for circumstances in which a person is involved in the cultivation of a prohibited plant. Okay, the government has made cannabis a prohibited plant, but the offence that this particularly deals with is endangering the life, health or safety of a child. The point that I think Hon Kate Doust and I are trying to make is that we find it very hard to understand what is so dangerous about a herbaceous plant growing in the soil that will create a danger for a child over and above numerous other plants that we might see growing in a garden and on top of that have mandatory provisions in regards to it. I will not speak any more on this, but quite frankly that is a nonsense. There are provisions about setting traps, barbed wire or things for people to fall into that are dealt with elsewhere in legislation. That is not what we are debating today. Although I said in my second reading contribution that I accept the dangers of clandestine laboratories, chemicals and the various components of that chemistry absolutely and that I think significant penalties should be attached to that sort of behaviour, I cannot extend that to growing marijuana plants in the backyard. It seems to me that that is a ridiculous position and that is why we cannot support it. Again, I have said that we support stronger penalties for people who endanger children through the production of illegal substances, but we cannot extend that to—we cannot even understand the logic behind what dangers are associated with—the growing of something that in essence is of a similar nature to a tomato plant. It has the same sort of leaves—it does not even have prickles on it for goodness sake! That is not to detract from the fact that there are issues to do with people consuming it, but what we are talking about is the growing of it.

Amendments put and a division taken, the Chairman (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple

Hon Kate Doust
Hon Adele Farina
Hon Lynn MacLaren

Hon Ljiljanna Ravlich
Hon Linda Savage
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan
Hon Brian Ellis

Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Jon Ford
Hon Sue Ellery
Hon Ken Travers

Hon Phil Edman
Hon Max Trenorden
Hon Jim Chown

Amendments thus negatived.

Hon KATE DOUST: I move —

Page 7, lines 12 and 13 — To delete the lines.

I think we touched on this issue in our earlier debate. We wish to delete the lines referring to an offence under section 7(1)(a) that involved cultivating a prohibited plant. We have just had a debate about growing marijuana and a range of other plants so I will not canvass those issues any further.

Hon PETER COLLIER: For the reasons I outlined earlier, the government will not be supporting the amendment.

Amendment put and a division taken, the Chairman (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple

Hon Kate Doust
Hon Adele Farina
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Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Ken Travers
Hon Sue Ellery
Hon Jon Ford

Hon Phil Edman
Hon Max Trenorden
Hon Jim Chown

Amendment thus negated.

Hon KATE DOUST: I move —

Page 7, line 20 — To delete “a first” and insert —
an

Page 7, line 30 to page 8, line 20 — To delete the lines.

These amendments are in a similar vein to the first two amendments that we moved. They deal with the mandatory sentencing provisions in this legislation. On principle, we are opposed to the mandatory sentencing aspect of this bill. We have had some debate about the distinction between the two types of drugs being created or grown. We believe that by deleting the words “a first”, it will enable the court to use the other three sentencing options that are available under this legislation, particularly when the issue of growing a cannabis plant arises.

Hon PETER COLLIER: For the reasons that I mentioned on the first amendment moved by Hon Kate Doust, the government will not support these amendments. They basically go to the heart of the bill, which is the mandatory component, and to the message that the government needs to get through to the community at large—that is, the tough on drugs approach that the government has and that it took to the last election. For those reasons, we will not support the amendments.

Hon KATE DOUST: The only thing I will say—this is probably my last opportunity—is that this is our third tranche of legislation dealing with clan labs, and all we have seen over the last couple of years, with the ever-increasing penalties and the imposition of jail sentences, is the ever-increasing establishment of clan labs. Therefore, I will be interested in 12 months to see the review and to see whether any of this legislation has had any impact on deterring people from establishing clan labs, because it is my view that if people are desperate enough to either access these types of drugs or make some dollars out of it, they will use whatever they can and will go ahead regardless of the consequences, unfortunately.

Amendments put and a division taken, the Chairman (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple

Hon Kate Doust
Hon Sue Ellery
Hon Lynn MacLaren

Hon Ljiljana Ravlich
Hon Adele Farina
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Peter Collier
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Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O’Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Jon Ford
Hon Linda Savage
Hon Ken Travers

Hon Phil Edman
Hon Max Trenorden
Hon Jim Chown

Amendments thus negated.

Hon GIZ WATSON: I move —

Page 8, after line 25 — To insert —

- (7) The Minister is to lay (or cause to be laid) a report of the review under this section before both Houses of Parliament as soon as practicable after the review is completed.

This seems to be a logical, reasonable and sensible amendment. We do not support this amendment bill, but we do support a review of the operation and effectiveness of this bill. As Hon Kate Doust has said, it will be important to see what impact it does have. If this bill does have an impact on reducing the number of clandestine laboratories, that will be excellent and we would be very supportive of that outcome. I guess we will see

whatever other consequences there may be when this amendment bill has been passed and when, three years hence, a review is carried out. I therefore ask the chamber to support this amendment, which will ensure that the report is tabled directly before both houses of Parliament. I believe the government will support the amendment, and I appreciate the government's support for it.

Hon KATE DOUST: We are very pleased to support Hon Giz Watson's eminently sensible amendment. I am pleased to see that the government is actually agreeing to an amendment—a rare occasion indeed.

Hon COL HOLT: The Nationals also will be supporting this amendment. We think it is a good idea. Any change to the legislation in this manner should be reviewed and brought back to Parliament for us to see how it has gone.

Hon PETER COLLIER: I have not actually spoken to the minister about this amendment. But I think it is an eminently sensible amendment and I have no problems with it. For all the reasons that have been expressed by Hon Giz Watson and Hon Kate Doust, and Hon Col Holt, of course—he did a sterling job—the government will support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 10 to 15 put and passed.

Title put and passed.

Bill reported, with an amendment.