

MISUSE OF DRUGS AMENDMENT (METHYLAMPHETAMINE OFFENCES) BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MICHAEL MISCHIN: Minister, I have had the opportunity to consider the advice that was presented to the Attorney General under the hand of the Director of Public Prosecutions, Amanda Forrester, SC, dated 5 May 2017. I am sure that it must have been an oversight—a technical error—but there seems to be a page missing from it. It jumps from page 3 to page 5.

Hon STEPHEN DAWSON: I think I did in fact provide the five pages, but the right pages might not have been photocopied. I have another copy here of the five pages. I want it back, though. I am happy to provide it to the attendants now to take a photocopy. They need to ensure that both sides are copied. Could they ensure it is provided back to me as a matter of urgency so that I can have it for the debate?

Hon MICHAEL MISCHIN: I will not focus on that for the time being in order to allow some work to be done on that. I have one question regarding the advice: does the minister have a copy of the correspondence that prompted this advice from the director? It commences —

The purpose of this Briefing Note is to outline the potential impacts on the ODPP and the criminal justice system if mandatory sentences are introduced in relation to methylamphetamine offending.

How did that advice come about? Was there a request specifically for advice on that general issue or more specific advice that informed the manner in which the Director of Public Prosecutions may have responded? If the minister has a copy of the request, may I have a copy of that as well?

Hon STEPHEN DAWSON: Unfortunately, I do not have a copy of it. My advisers say that it relates to the Attorney General's office. They are not aware of how the letter came about; whether it was a verbal or written request. I am advised, though, that the DPP had been consulted during the drafting of the bill. I am sorry; I do not have an answer to the member's question.

Hon MICHAEL MISCHIN: I have exactly the same problem that I had before—four pages of a five-page letter!

Hon Stephen Dawson: I assure the member I handed over five pages; obviously he did not get five back.

Hon MICHAEL MISCHIN: I believe the minister.

Hon Nick Goiran: Very shifty.

Hon MICHAEL MISCHIN: Very sneaky! I am happy for the minister to just summarise where we are for the moment as to the marked omission from the Misuse of Drugs Amendment (Methylamphetamine Offences) Bill 2017 of anything relating to mandated minimum terms of punishment or different levels of trafficking in methylamphetamine. I am happy if the minister responds with one-word answers by interjection, but am I to understand, then, that it was not —

Hon Stephen Dawson: Do you have page 4?

Hon MICHAEL MISCHIN: I have. I am anxious to read it.

Am I to understand that at the time of the election it was not Labor Party policy to mandate minimum terms of imprisonment? I would like a simple yes or no. Was it not Labor Party policy to mandate minimum terms of imprisonment?

Hon Stephen Dawson: I am advised that the policy is as stated on that media release of 3 February 2017.

Hon MICHAEL MISCHIN: And no more than that?

Hon Stephen Dawson: That is the advice I am being given.

Hon MICHAEL MISCHIN: Would the minister table a copy of that, please?

Hon STEPHEN DAWSON: I am pleased to table a copy of a media statement dated 3 February 2017. I want it back, though because the member might ask me about it again.

[See paper 353.]

Hon Michael Mischin; Hon Stephen Dawson; Hon Adele Farina; Deputy Chair; Hon Simon O'Brien; Hon Rick Mazza; Stephen Dawson

Hon MICHAEL MISCHIN: The minister has tabled the Labor Party's policy in the lead-up to the election on methylamphetamine drug abuse; correct?

Hon Stephen Dawson: I am advised that is the case.

Hon MICHAEL MISCHIN: Okay. Was it not part of the policy to mandate minimum terms of imprisonment?

Hon Stephen Dawson: No.

Hon MICHAEL MISCHIN: Has it never been part of ALP policy to mandate minimum terms of imprisonment?

Hon Stephen Dawson: I can't answer that question.

Hon MICHAEL MISCHIN: Since the announcement of that policy, anyway, it has not been ALP policy to mandate minimum terms of imprisonment for trafficking in methylamphetamine.

Hon Stephen Dawson: I am sorry; you'll have to ask the full question again.

Hon MICHAEL MISCHIN: From the time that that policy was announced in the lead-up to the election until now, has it never been ALP policy to mandate minimum terms of imprisonment for methylamphetamine trafficking?

Hon Stephen Dawson: I'm advised that is the case.

Hon MICHAEL MISCHIN: Advised? Well, what —

Point of Order

Hon ADELE FARINA: I ask for your direction, Mr Deputy Chair (Hon Dr Steve Thomas), because we seem to be spending a lot of time debating policy, and not even necessarily the policy of the bill but the policy of the Labor Party on various issues. I thought that we were in consideration of the bill in detail, and that the policy of the bill had been dealt with in the second reading speech, and therefore there should be no discussion of the policy of the bill during the committee stage, and certainly no discussion of the policy of the ALP during the consideration of the bill in detail. I seek a ruling on that basis.

The DEPUTY CHAIR (Hon Dr Steve Thomas): Hon Adele Farina, I take that as a point of order. Hon Michael Mischin, I am going to ask you to take your debate back to the substance of the bill, rather than the policy.

Committee Resumed

Hon MICHAEL MISCHIN: Yes, I understand that. I will turn to the policy of the bill and whether the bill matches the announced policy of the bill. I refer to the following remarks —

The community quite rightly expects tough action against methamphetamine dealers and traffickers.

That was announced as part of the second reading speech.

Hon Stephen Dawson: The second reading speech?

Hon MICHAEL MISCHIN: Yes. Correct?

Hon Stephen Dawson: I am just getting it. If you're reading from it, member, I will take your word for it.

Hon MICHAEL MISCHIN: That is what was said. Am I to understand that it is the position of the government that this reflects the expected tough action that the community rightly desires?

Hon STEPHEN DAWSON: I thank the member for the question. As I mentioned previously, this is one part of a suite of commitments that we believe helps with the scourge of methamphetamine around the state. I will not go over the stuff I have read previously, but we have a comprehensive package, we believe, to tackle the issue, and this is one very important part. But, as we read my speech, we can see that that is certainly what I said and the advice I have been given by the responsible minister.

Hon MICHAEL MISCHIN: I thank the minister. The second reading speech continues —

This legislation implements our commitment to reduce the supply of methamphetamine by increasing penalties for drug traffickers. The penalties will be some of the toughest in the country.

What are the other penalties around the country that these are among the toughest of?

Hon STEPHEN DAWSON: Member, I am advised that that, too, is true; however, neither my advisers nor I have information in front of us about the penalties around the country. I am, of course, very happy to seek that advice and provide it to the member once it is provided to me.

Hon MICHAEL MISCHIN: The second reading speech continues —

Hon Michael Mischin; Hon Stephen Dawson; Hon Adele Farina; Deputy Chair; Hon Simon O'Brien; Hon Rick Mazza; Stephen Dawson

This bill sends a strong message to drug dealers and traffickers—that they will feel the full force of the law.

The law is what the law is made to be, but how does this enhance the full force of the law, or is this just tautology?

Hon STEPHEN DAWSON: I am advised that it increases the penalty from 25 years to life, and it also increases the fines under the act.

Hon MICHAEL MISCHIN: I thank the minister. Is it really saying that they will feel the force of the law whatever the law happens to be? I do not get that, but there we are. The media release of 16 May announcing this bill quotes the Premier —

The community expects meth traffickers to be locked up for a long time. ... By increasing the penalty for meth traffickers to life imprisonment, we are acting to significantly reduce the supply of meth in WA.

Can the minister point out how this bill will significantly reduce the supply of methylamphetamine in WA, and how it will result in offenders being locked up for a long time?

Hon STEPHEN DAWSON: The bill fulfils the McGowan Labor government's commitment to introducing a tough sentencing regime for methamphetamine traffickers in two ways. Firstly, by increasing the maximum sentence of imprisonment from 25 years and/or \$100 000 fine to life imprisonment and/or unlimited fines for trafficking 28 grams or more of methamphetamine; and, secondly, by ensuring that life imprisonment for methamphetamine trafficking can continue to be heard in the WA District Court rather than the WA Supreme Court. It will introduce the envelope within which a judge can determine a sentence. Section 6 of the Sentencing Act ensures that higher statutory sentences must be taken into account by the court.

Hon SIMON O'BRIEN: I hope this is a convenient time to ask this question. If the minister wants to defer it to another time, we can. My interest in it is sufficiently general. The minister alluded to the benchmark of 28 grams. I think my question is important even though it is a bit "techo". What is 28 grams of methylamphetamine; for example, does it mean 28 grams of 100 per cent pure methylamphetamine or does it mean 28 grams of a substance that the arresting officer, the charging officer and everyone else may refer to as methylamphetamine but it may be far less than 100 per cent pure? I think the minister can see where I am heading with this. How might the relevant authorities determine what is 28 grams of methylamphetamine? It might be 2 800 grams of a seized product but if it is less than one per cent pure, it may not be seen as 28 grams, if my mental arithmetic is up to scratch.

Hon STEPHEN DAWSON: I thank the member for the question. I am advised that it is not 28 grams of pure meth; the 28 grams relates to the weight of the product, so it is 28 grams of whatever. I am also advised that the purity over the last year has been about 70 to 75 per cent. However, that is not taken into consideration; it is simply 28 grams in weight. I jokingly asked my advisers when I was briefed on this bill earlier: could I bring in a bag of stuff that looks like 28 grams to show members? I was advised that, given the heightened security around Parliament, it would not look good if somebody brought 28 grams of a white-looking liquid through the scanning machine. So I do not have anything in front of me that I can wave around to show members what it looks like but I can say that 28 grams refers to the weight.

Hon SIMON O'BRIEN: I am intrigued by that answer! I appreciate the minister's good intention of wanting to give a visual demonstration. Those observing the record through *Hansard* would not be able to see it, but it is useful to have a visual depiction so that members can understand what we are talking about. Is it a matchbox size, for those who remember matchboxes, or is it more like a pound-bag of flour? I thank the minister for at least thinking he might do that.

As it happens, I recall a similar event when, many years ago—just to illustrate the point and perhaps the minister might reconsider—when last in opposition, the Liberal Party wanted to show how much cannabis could be produced by the couple of hydroponic or other cannabis plants that the previous Labor government wanted to make legal for people to grow in their own homes.

Hon Donna Faragher: They did.

Hon SIMON O'BRIEN: They did; that is the track record. Someone ferreted around and got lawn clippings out of their garden and we came up with these "deal bags" of grass clippings as pseudo-cannabis. The Labor minister of the day —

Hon Stephen Dawson: I don't understand what the member is talking about, sorry.

Hon SIMON O'BRIEN: I do; it was 30 grams' worth. The minister is meant to be the one putting forward this bill so he should know. Perhaps I will have to broaden his education.

Hon Stephen Dawson: Perhaps it's the terminology you're using.

Hon Michael Mischin; Hon Stephen Dawson; Hon Adele Farina; Deputy Chair; Hon Simon O'Brien; Hon Rick Mazza; Stephen Dawson

Hon SIMON O'BRIEN: I have got the lingo, do not worry about that. We had this pile of stuff, but I remember—thank you for your indulgence as I flirt with the idea of stretching the relevance.

The DEPUTY CHAIR: It is being stretched, honourable member.

Hon SIMON O'BRIEN: We got that through the security of the house quite safely then, although one of the then Labor ministers, a former policeman I might add, was quite outraged by this and said we should have been arrested for having that amount of cannabis on us. When it was pointed out by everyone else in the world who realised it was only pseudo-cannabis, he said that we should have been arrested for creating a false suspicion. That was cannabis and this is methylamphetamine. If you do not mind, Mr Deputy Chairman, I will come back to the point of the bill, and the 28 grams of methylamphetamine. I note the minister's answer just now to my question—70 to 80 per cent pure —

Hon Stephen Dawson: It's 70 to 75 per cent pure.

Hon SIMON O'BRIEN: The 70 to 75 grams of —

Hon Stephen Dawson: No; it's the purity.

Hon SIMON O'BRIEN: I beg your pardon. The 75 per cent purity for many street drugs is very, very pure indeed. It is a characteristic of many non-plant types of illicit drugs that they be cut to a purity far lower than 75 per cent, very substantially indeed, so a whole chain exists from supplier to wholesaler to distributor to street-corner dealer and so on for many illicit drugs such as heroin. I am not particularly familiar with methylamphetamine. Is the methylamphetamine typically cut in the manner I have described or does it retain the purity of about 75 per cent?

Hon STEPHEN DAWSON: Thank you for the question. I am advised that those who deal in or sell drugs are no longer cutting the drugs. It basically stays in the pure form. To give Hon Simon O'Brien a visual idea of what 28 grams might look like, it is approximately two and a half centimetres across a sandwich bag.

Hon SIMON O'BRIEN: We used to call it an inch. I do not know whether that is illegal these days! That gives us a good idea. I would have thought that was a substantial quantity. I take the minister's advice on that. Methylamphetamine is not a narcotic that I have had much exposure to. I am also reassured by the advice that the drug has a purity in the order of 70 to 75 per cent, and that seems to be fairly unvarying. It is also fairly high. I still have some concern, and that is: might we see an argument in a court about what is 28 grams? If a person is on the borderline and is in possession of 28 grams and let us say someone has 29 grams—their sandwich bag is a little more generous than the next person's—but they can demonstrate that the purity of the product is less than 70 or 75 per cent, could there not then be an argument for them to say, "Hang on, I haven't got 28 grams of methylamphetamine", and therefore this particular provision would not apply?

Hon STEPHEN DAWSON: First of all, the threshold for trafficking in the Misuse of Drugs Act is 28 grams; that is why "28 grams" is included in this bill. I am also advised that the ChemCentre of Western Australia determines the weight and that advice is given to the court.

Hon RICK MAZZA: Along the same line of questioning as Hon Simon O'Brien, is the minister saying that if someone is in possession of 21 grams of pure methamphetamine and, let us say, 10 grams of laundry detergent, they are deemed to be a trafficker, but that someone in possession of 27.5 grams of pure methamphetamine is not a trafficker?

Hon STEPHEN DAWSON: I am advised that according to the current legislation in Western Australia, 28 grams is in fact the threshold for trafficking. If they are in possession of less than that amount, a person will not be deemed to be a trafficker under the Misuse of Drugs Act. I know the member may have more questions on the clause; however, I will move that progress be reported.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Stephen Dawson (Minister for Environment).

[Continued on page 2732.]