

MISUSE OF DRUGS AMENDMENT BILL 2011

Second Reading

Resumed from 22 September.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [12.45 pm]: I have been waiting to deal with the Misuse of Drugs Amendment Bill 2011 for a while. This bill deals with a very important issue in our community, and one that seems to be proliferating on a day-to-day basis. In fact on my way in to Parliament this morning I heard on the radio that the 158th clandestine laboratory to be found this year was found today in Boyup Brook. When this legislation was first introduced to the chamber a few weeks ago, I think we were on to the 156th clandestine laboratory with the discovery of one in Toodyay. When the legislation was first introduced into the Legislative Assembly in September, the minister put out a press release saying that 122 clandestine laboratories had been discovered. Sadly, it is an ever-escalating problem. I note that the legislation we are dealing with today seeks to roll out the final parts of the relevant proposals that the Liberal government indicated as part of its election commitments. This is the third piece of legislation introduced during the period of this government to address issues relating to the misuse of drugs. I do not know whether it is Minister Collier who is handling this bill today on behalf of the government.

Hon Donna Faragher interjected.

Hon KATE DOUST: I noted that the parliamentary secretary was taking an interest, so I was not too sure whether it was the parliamentary secretary or whether it was the minister, because I know that the parliamentary secretary has an interest in these matters.

This is the third tranche of legislation that we have had to deal with over the last couple of years to try to address these types of problems. This legislation deals with some specific areas. I am looking at the document that the Liberal Party put out during the election period, entitled “Tackling Illicit Drugs in our Community: Law Enforcement”. Its first matter, the criminalisation of cannabis possession and cultivation, has been dealt with in legislation. This bill seeks to amend the Misuse of Drugs Act 1981. It allegedly deals with cracking down on drug dealers—I am going to come back and talk about that a bit more—protecting children from endangerment and banning drug use kits.

I do not know whether this bill will do the things that the Liberal government hopes it will, because, as I have said, since the introduction of government legislation there has been a further increase in the numbers and types of laboratories. This bill does not just deal with clandestine methamphetamine laboratories; it also deals with the growing of cannabis in hydroponic facilities.

During the past few days I have had the opportunity to participate in a biotechnology conference in Adelaide, the AusBiotech 2011 National Conference. I must say, it was a fantastic conference. It afforded me the opportunity to sit and talk to a whole range of people involved in the biotechnology industry, and a range of people who have very extensive experience in drug manufacturing of the legal type. Some of the people I had the opportunity to speak to also had some experience working in chemistry laboratories here in Western Australia. One person in particular had experience at the ChemCentre. I took the opportunity to talk to those people about this legislation, and the effectiveness or otherwise of legislation that has been passed, to deal with the issue of methamphetamine laboratories. In the discussion I had with them it was quite interesting to hear their views on whether it is effective and what could be done to have a greater impact in achieving the outcomes that the government and the community want in dealing with these types of illicit drugs. I will come back and talk about those discussions because I thought they were very useful and certainly very educational for me, given that I do not claim to have any level of personal experience in —

Hon Giz Watson: Chemistry.

Hon KATE DOUST: Yes. I was not very good at chemistry; the member is right, certainly not in the creation of drugs. I got one of these fellows to explain to me the process and the types of chemicals now being used in clan labs. The discussion was about how every time a restriction is placed on the type of chemicals that can be used or accessed, people get smarter. People who use clan lab techniques to create illicit drugs get cleverer about where they source the base materials and in the types of materials they use. In a lot of cases that leads to a much more dangerous environment in which the drugs are created. I will come back and go through that a little more.

It was interesting also during this week that while I was at AusBiotech, another conference was being held in Sydney, the University of New South Wales 2011 National Drug Trends Conference. There were a couple of very pertinent articles in the media this week, one in *The Sydney Morning Herald* on Monday, 17 October headed, “Surge in crystal meth use prompts concern at mental health effects”. The article indicated that almost half of injecting drug users and a quarter of regular ecstasy users this year reported having used “ice” in the previous six months. That was reported at the drug trends conference. The article goes on to quote Dr Lucy

Burns, a senior lecturer at the New South Wales research facility, as saying “Methamphetamine is associated with psychosis, aggressive behaviour and unpredictability.” That is one of the things the people I spoke to in Adelaide talked about. Some of them said it was interesting when sitting around in social forums or being out in the community to watch people because it was fairly easy to detect who is a user and who is not a user of these types of drugs. The article also states that these types of amphetamine stimulants are now becoming the second most widely used illicit drug in the world after cannabis. Of course, that is a great concern for all of us. The article goes on to talk about the issues of price, purity and availability, based on interviews with users. There is a range of data and I am sure the minister responsible will be keen to track down the reports that have come out of this conference. The article states further —

Forty-five per cent of people who inject drugs said they had used ice in the previous six months—up from 39 per cent in 2010, but still less than the peak of 57 per cent in 2006.

It is quite scary to read those types of statistics that indicate that people are seeking out this type of drug, the creation of which is obviously a lot more dangerous as are the health impacts, both physical and mental, and the social outcomes for other people in the community. As we have seen, one of the concerns flagged in this bill is: how do we manage issues of children being found in close proximity to the potentially dangerous types of laboratories in people’s backyards? I will talk about issues later on such as why people are resorting to manufacturing these types of highly toxic drugs in their backyards. Another article I found, again in *The Sydney Morning Herald* of Tuesday, 18 October 2011, raised a range of very interesting issues about these types of homemade drugs. The article referred to how the sellers of so-called “legal highs” can create and market new drugs so quickly that it will become more difficult for authorities to keep on top of the problem. Just changing one carbon of a chemical compound can result in a new drug being developed. Backyard developers can find on the internet drug structures through old academic research papers and the patent applications.

During my discussion with people in Adelaide they talked about the use of the internet. People can find anything on the internet; we can learn how to create these drugs there and how to source the drugs. They are very important issues that need to be canvassed when we are looking at the type of legislation we are dealing with today. I also heard during the discussion I had with these people that people are moving away from classic types of chemicals and into a range of different things. Some of the examples that were provided to me were that although people can obtain pseudoephedrine—we know that due to Project Stop, pharmacies can restrict the amount of pseudoephedrine that is purchased through medication—only one to two grams of pseudoephedrine is needed to make quite a substantial amount of methamphetamine, and that when pseudoephedrine is used, substances such as lithium are added. People buy normal batteries, break them down and extract the lithium. They also use dry ammonia, which they get from fertiliser. We all know we can go to Bunnings, Coles or Woolworths and buy a bag of fertiliser. We can also purchase batteries from any range of retail outlets without restriction or check. Another example is the treatment of ammonium sulfate with Drano and the use of propane gas to make gaseous ammonia, which is chilled to make liquid ammonia. In the view of the chemists I was talking to, the propane in the manufacture of drugs in clan labs is the extremely dangerous component. These are all readily accessible types of base components to the drugs being manufactured. It probably makes it a lot easier to understand why we are seeing an increase in the number of clan labs; that is, because people can put their hands on these components.

It was also the view that, although in the past the traditional types of chemicals have been banned, people have had to resort to these other options. The view is that if we try to restrict the sale of these other types of products, the drug makers will get cleverer. I think drug use of this type of product is slightly different from drug use among people who use cannabis or heroin. I do not have a great depth of knowledge about it. The parliamentary secretary probably has more experience with reading on these matters, not with using obviously.

Hon Donna Faragher interjected.

Hon KATE DOUST: I make that quite clear. I think these types of manufactured drugs are extremely dangerous, and as a parent my greatest fear is around the accessibility of drugs. We want to make sure nobody is out there making it or selling it. People talk to me about how desperate these people get. As I understand it, in the majority of these manufacturing laboratories, people are making it for their own use. It is really backyard work so that they can make enough of the drug to use it for themselves. I do not know necessarily—I would be interested to know from the minister—what sort of research is being done about where drug laboratories are found. For example, in Toodyay, Boyup or any of the other suburbs they have been found in over the past year, how much of the drug was for personal use and how much was expected to hit the streets? It would be interesting to know that. I understand that the need to have this drug is intense.

Sitting suspended from 1.00 to 2.00 pm

Hon KATE DOUST: I have come back from the break wondering what I was saying; I think the Deputy President (Hon Matt Benson-Lidholm) cut me off midsentence. I think I was talking about the types of drugs that

people are now sourcing; it might even have been about the intensity of the drugs. I reiterate that this is the third bill of its kind that we have had to deal with. I have said to the minister on previous occasions that rather than taking a piecemeal and ad hoc approach with this type of legislation, it may have been better if the government, at the very beginning, had been more diligent, had taken more time and had perhaps sent a bill of this type to a committee to look at all the issues associated with the creation and use of these illicit drugs that we deal with on a regular basis in the community.

One of the other matters that is picked up in this bill is the use of different drug paraphernalia, which we have canvassed in previous legislation. Particularly with clandestine drug laboratories in which people are resorting to the use of products such as batteries, Drano and ammonia, this drug paraphernalia is not what we would find in a state-of-the-art chemistry laboratory or even a school lab, which will have beakers, Bunsen burners, tubes, phials and all sorts of interesting items. I know that restrictions are placed upon the type of equipment that chemists can order and purchase for their own work, and it is because of those restrictions that people have had to resort to other types of paraphernalia. I imagine that when these drug labs are busted, the police would provide reports about the types of implements used. I dare say, because they are predominantly available in people's homes, that we have started to see people using household items such as kitchen utensils, be they glass jugs, saucepans, bake ware, gas bottles with hoses or other equipment that most people have access to legitimately. These are items that we can go into a range of places and purchase without the items being tracked, recorded or accounted for.

It will be interesting when we look at this bill in more detail and talk about increased penalties and changes in the arrangements for the amount of a drug that can be left on a piece of paraphernalia, because we will not be talking about items that are found in a formal chemistry laboratory; they are items that are found in household kitchens. In fact, when I met with some of these chemists, they said that if I really wanted to know how these things work, I should watch the TV show *Breaking Bad*. I said that I had not watched it. I do not know whether any of my colleagues in the chamber have watched *Breaking Bad*. No? I understand that it is an American show about a chemistry teacher who finds he has a form of cancer. He does not have health insurance, so he thinks about what he can do to pay for his medical treatment. He observes one of his chemistry students making methamphetamine. He tells the student that he is doing it wrongly. The student was not doing it properly, so he shows the student how to do it. When he sees the student making money, he thinks that he can do it better!

Hon Peter Collier: This is the chemistry teacher?

Hon KATE DOUST: This is the chemistry teacher. I have not seen the show, but that is my understanding of what it is about. The chemistry teacher then becomes the meth creator. I do not know the ending to this story, but anything to do with illicit drugs cannot have a happy ending. I was told that it is an interesting show, and at some point I will go out and borrow the DVD from someone to get my head around how this stuff is actually made.

One of the issues that comes up when we hear about and get the visuals on our TVs of these drug labs being raided is that, tragically, in a number of cases, children have been involved, and occasionally we have seen people carted off to hospital with injuries. A few years ago there may even have been an explosion in the eastern suburbs, perhaps out Armadale way, in which a fellow was injured quite badly as a result of an explosion. These drugs are toxic, not only in the physical outcome of their use, but also in the manufacturing process—the fumes and vapours; chemical spills can be quite dangerous and, of course, there is the potential for explosions. As I said, these chemistry experts said that it relates to mixing the chemicals and also using propane, because people do not know how to use it properly. These are amateurs; they are not professional chemists. These are mums and dads—people who are desperate to get their hands on this drug, which is why they are making it. That is the point I had reached before lunch. I was talking about people's absolute desperation.

People are accessing information from a variety of places, including the internet. I understand they can go online and access the methodology behind creating the drug—the how-to guide, if we like—and they can also access information about which chemicals or household products to use to develop the drug. As I said, people will get smarter and they will start to use all sorts of alternatives because they are desperate to get this fix. What I am getting to is that, based on the discussions I had this week, these chemists were saying that putting in place a range of punitive measures, be they ever-increasing penalties or jail terms, is not solving the problem. This is the third bill of its kind that we have had to deal with, and all we have seen in the last couple of years, tragically, is a growing number of these types of laboratories being set up and a growing number of people developing drugs of different types for their own use. That is a real issue that we have to address. I do not know whether this legislation is the answer. These drugs are not new. Methamphetamine is not a new drug, and creating methamphetamine is not new. It is not something that has come about in only the last 10 to 15 years. I understand that these drugs were developed prior to the Second World War; they are drugs that the chemists still refer to as Nazi drugs because they were developed during that period. In the Second World War, Nazi soldiers were fed these drugs to keep them alert and aggressive. The principle has not changed. The basic components may have altered out of necessity for the creators because of their desperation to have that fix, but these types of

drugs have been around for a very long time; they have just become more accessible to individuals. It is an ever-growing problem. I go back to the two newspaper articles I quoted, which detailed the increase in the statistics on usage and quoted people as saying that over the six-month period when they may have been users of other types of drugs, they certainly had been tapping into ice. It is a real issue. There must be other ways of dealing with these matters, as well as having fines and other types of penalties.

People have said to me that we need to better educate people about how to identify whether there is a meth lab in their community or street. I know a lot of this is sensory. Is the government running any type of education program or advertising to educate the community on how to identify these things? The first thing, of course, is smell; people will smell the ammonia. They might notice people coming and going from a property. There must be a range of ways of alerting people to how to identify it. Let us face it; it is not about just the immediate danger to the people who are creating the drug or the people who are living in that home, but also the danger to the neighbourhood. The other issue is that when people do become aware of a meth lab, they need to be educated on how to take up the issue by notifying the police. Another member talked to me earlier in the week about people in a particular cul de sac in his electorate who know there is a meth lab there but are too scared to take up the issue. People need to feel safe and secure so that if they identify a meth lab in their area, they can report it and get the issue resolved. I do not know whether people have reached that level of security in terms of the notification processes. If the government is going to put legislation in place, it needs to back it up with a series of other measures so that people become better educated on how to tackle this issue, because it is happening in their backyards. It is not necessarily going to be tackled simply by increasing penalties or sending people to jail. When people are so desperate that they are using household products to create a highly toxic and dangerous drug, they are not necessarily going to have the dollars to pay a fine. If they are sent to jail without any sort of follow-up or rehabilitation, I do not know whether that will resolve the problem either. I think there needs to be a very broad community education process about how to deal with these types of issues. If the government does that, it might find that there is a greater appreciation in the community of how to deal with these things. It is an ever-growing problem. As I said earlier today, it is one that we want to protect our children from. We certainly want to protect the children who reside in or around those homes.

I might just look at what this legislation actually does. The legislation probably proposes four key changes. We have touched very briefly on some of them. The first is obviously the item about causing harm to a child. This change essentially deals with what happens in a situation in which a child is present when a clan lab is in operation. It deals with the types of offences that would come into play. This is also where the definition of an adult is set at 16 years of age for the purposes of this legislation. I think that is right.

Hon Peter Collier: I think so.

Hon KATE DOUST: The minister has read the bill, has he not?

Hon Peter Collier: Which one is this? Which bill are we dealing with today?

Hon KATE DOUST: Which bill are we dealing with today? That is always a good question!

The second is about exposing a child to harm. Labor will support the majority of this bill but we do not actually support the mandatory sentencing element attached to this bill. We are concerned that there is a difference between the penalty that will be imposed for a first offence for exposing a child to harm and, in some cases, the mandatory sentence that would be imposed for a second offence. I am sure Hon Giz Watson will spend more time on this than I will. The concern is that this takes away the discretion of the court to impose the appropriate penalty, because we do not always know what circumstances led a person to that situation or what the long-term outcomes will be if a particular penalty is imposed. This is particularly pertinent when dealing with how a child will be catered for if their parents are sent to jail for an extended period as a result of a second offence under this legislation. There are new penalties for selling drugs to children. Again, this deals with the options for sentencing. Then there are changes dealing with drug paraphernalia bans. I think we dealt with this type of matter fairly extensively in the last round of legislation. At that time we had a very interesting conversation about hookahs and shishas.

Hon Peter Collier: The old hookahs and shishas!

Hon KATE DOUST: Hookah not hooker! I know that the current regulations exclude hookahs and shishas. I just want the minister to confirm that any new regulations under this legislation will also exclude those two types of paraphernalia. My understanding is that they are predominantly used for tobacco-type products rather than drugs, and so should be excluded. I was recently in a retail shop in my electorate and saw a range of quite elaborate hookahs on sale. It was quite interesting, because it was not the area in which I expected to see them. But, obviously, with changing communities, we will see an increase in people wanting to use that paraphernalia. It may not have been in a retail shop. I remember now; I was in a kebab shop in Victoria Park. Blokes were sitting there using their hookahs. I do not know how one uses a shisha, but it looked quite impressive. It was a

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

hookah, not the type the minister is giggling about! I want the minister to confirm that the government will exclude both those types of paraphernalia from the regulations. I think that will make some people obviously quite comfortable.

A press release was put out by Minister Johnson, the Minister for Police, on 14 August 2011 in which he outlined what the changes would be and talked about mandatory jail for drug offences against children. At the very end of his press release he talked about how —

... the legislation fulfilled a Liberal Party election commitment to toughen penalties for drug offences involving children.

He then went on to say —

... the State Government would continue to target the illicit drug trade in Western Australia with further reforms being considered.

We know that there were four key planks in the Liberal Party election platform. We are now dealing with what we thought were the last three areas that the government wanted to cover.

Hon Donna Faragher: We are a progressive government.

Hon KATE DOUST: That is debatable. I am sure we will continue to talk about that. My question to the minister is: what further reforms in this area is the government contemplating?

Hon Peter Collier: I will respond.

Hon KATE DOUST: Good; the minister will come back to us on that one. As I have said before, if the government is going to handle this problem properly, it should not keep introducing dribs and drabs of legislation that just pick around the edges, but should do it properly by taking a holistic approach and looking at the substance of the problems. I would be interested to know whether, since the introduction of the first two pieces of legislation, the government has done any research, firstly, to see what sort of impact the legislation has had on the reduction in the use of these types of drugs, and, secondly, whether any of that research looked at the reasons people use these drugs. That is, the reason people who do not necessarily have that experience are getting into using these drugs and are developing the knowledge and skills to create these drugs. It is October and 158 clandestine labs have been found in the year to date. That is a big concern. I think last year probably about 110 or 120 clan labs were found over the 12-month period. I am sure that the minister will give me the correct figure for 2010, but it is a growing concern. I think that the government needs to have a really good look at why this is happening and why people are so desperate to go down this path.

Some other questions I have about the Misuse of Drugs Amendment Bill are: How many people have been arrested for manufacturing drugs in clan labs since this type of legislation has been in place? I know we had one very high-profile arrest and jailing, but how many others have been arrested when clan labs have been busted? What follow-through happened; and what was the outcome? I think that would be quite useful in educating us about how this legislation is playing out.

Another area of concern is that although some of the focus on this bill, particularly the media focus from the government side, has been about the concern for children in and around clan labs and putting in place really tough penalties for people who have been involved in that, penalties are also being brought in to deal with growing cannabis. I would have thought that having children in an environment in which methamphetamine is being developed, given all the issues around that—it is highly explosive and produces highly toxic vapours and fumes—is a totally different environment from that in which cannabis is grown. Again, I do not know because I have not been in that environment —

Hon Donna Faragher: Hydroponically grown cannabis uses very similar chemicals.

Hon KATE DOUST: Are vapours and fumes produced as part of that process? I do not know that.

Hon Donna Faragher: That's my understanding.

Hon Giz Watson interjected.

Hon Donna Faragher: I'll deal with it when I'm —

Hon KATE DOUST: I am interested in knowing that because I always thought growing cannabis hydroponically was the same as growing it in the ground. I did not know that chemicals had to be applied in the base to grow it. I do not know whether I have mentioned this before, but I had a lovely house in Marangaroo with lots of glass. After I sold it, I got a phone call from the former member for Girrawheen, the late Ted Cunningham, asking me where my street address was. Our lovely little house had lots of glass. Ted said to me,

“You better watch the Channel Seven news tonight; your house has just been raided.” The bloke I sold it to had turned the whole place into a hydroponics factory because he just loved all the glass, so we just never know!

Hon Simon O’Brien: It was a greenhouse!

Hon KATE DOUST: It was a greenhouse, the member is right! They could not grow much on the outside, I can tell members, but they certainly grew a lot on the inside.

I am interested to know why hydroponics is being treated in the same way as meth labs because I have always been under the impression that the safety levels were different. I would not have thought there would be the same implications. We talk about how these places are raided, how the people who have been creating meth and the paraphernalia and the drug, obviously, are taken away and the places are cleared out. I read a very interesting article on a website called Meth Lab Homes. I am sure members can all google it if they want. The article states, “Residential areas accounted for 71.3 % of Australia’s meth labs”. That is an amazing statistic, but the article is also about what happens after the police and the chemistry experts have been through with the clean-up and the remediation. This is why I talked about the implications for the people living in the street or the community. I do not believe that we have actually canvassed the remediation issue in any of the three misuse of drugs bills. What is government doing about how these sites are remediated or totally cleaned up? This article raises some very interesting points—I will go through some of them—about the long-term effects of these types of chemicals staying in the environment and the health implications for people in and around that area. The article states —

... scientists know about the chemical structure of the chemicals used to make meth. Those chemicals, which are composed of microscopic particles, are easily inhaled in to the lungs and can also be absorbed through the skin. Those who are in a former meth lab home, without adequate protection for their health, have had their health put in harm’s way. Studies show that infants and young children, who are small in stature and who tend to spend more time on the floor (sitting, lying, playing), are particularly at risk from becoming ill from their exposure to meth lab chemicals, some of which are known carcinogens like Benzene.

The article goes on to state that the components of these chemicals are so small that they can get into carpets and power outlets and all sorts of obscure places that might be given a cursory clean-up but not the full clean-up that is required to remove them. The article also states —

New health problems can begin soon after living in a former meth lab home, but some health problems may take a decade or more to surface, some experts say. Those who had existing health problems, before they move in to a contaminated home, often find those health issues worsening as a result of their exposure to the meth lab chemicals that permeate every surface in their home.

The article goes on about children, and also states —

John Lawler, ACC’s Chief Executive Officer ... warned Australians about the chemical contamination that is being caused by meth lab chemicals and their waste products ... he said, “The residue of drug manufacturing can pose risks for many years including damage to the environment through soil and water contamination as well as disposal of toxic waste in public spaces.”

Just as it is in the U.S., Australia’s meth-makers are using pseudoephedrine ... to cook up batches of homemade methamphetamine, mainly for their personal use. Despite the fact that many pseudoephedrine sellers in Australia are now using an electronic tracking program called Project Stop ...

I said earlier that even though we have Project Stop in place to restrict how many packages of drugs with pseudoephedrine people can buy, people are still able to obtain the amounts they need to create methamphetamine because the amount needed is quite small.

I am really interested in the government’s response to that issue, because when meth labs are removed from homes, after everything is done and dusted, at some point those children and families go back into those homes. What is the government’s thinking about remediation and ensuring that those places are totally cleaned out so that there are no potential health hazards for people who have to live in or alongside those homes?

We have put a number of amendments on the notice paper; from memory, I think there are about four or five amendments. These amendments were canvassed in the other place and most of them go to our concerns about the discretion that can be applied in sentencing, specifically our concern about the mandatory sentencing that will be applied in the second category of penalty, particularly when children are found or for, I think, the second offence for sale of these types of drugs. We understand that this is a very serious issue and that a fairly strong approach must be taken. However, as I said, we are concerned that the courts will not have discretion in these circumstances to take into account what led the individual to that point and the possible outcomes for the individual. I will go through that in more detail in committee, because I think that would be a more appropriate time to do it.

A couple of other concerns have been canvassed about the penalties. We have already talked about hookahs and shishas. The Minister for Energy might like to explain how people will have access to Fitpacks after this legislation is passed and whether the bill has an impact on needle exchanges. Have needle exchanges been excluded in the regulations? How will the government manage that? We acknowledge the issues and know that this is a longstanding election commitment of the Liberal Party. It is interesting that it has taken until the fourth year of this government before the bill was introduced. I believe that the government could have managed this issue in other ways. It could have looked more broadly at how to change community attitudes and found out why the manufacturing of drugs has become a growth industry. That is the real concern. The Minister for Police has a kneejerk reaction to these types of issues and certainly takes a very populist approach to them. Obviously he has decided that talking up mandatory sentencing is the ultimate way to discourage people from being involved in a clan lab. He is being both foolish and misleading the community if he thinks that will stop people from manufacturing or using these drugs. The government needs to have a very good look at other options and how to tie in penalties with education so that people have a far greater understanding of the implications for themselves and their families if they choose to manufacture, use and sell these types of drugs to either adults or children rather than hit them with a huge fine or put them in jail. I have raised just a few of the number of matters we wish to canvass in committee. We will support the bill, although we have a few concerns about it, but we will not support those parts of the bill that expressly deal with mandatory sentencing.

HON GIZ WATSON (North Metropolitan) [2.33 pm]: I rise to make a few comments on the Misuse of Drugs Amendment Bill 2011 on behalf of the Greens (WA). This bill intends to replace the existing provisions relating to ice pipes and cannabis smoking paraphernalia with a more general reference to drug paraphernalia. The definition of “drug paraphernalia” covers anything made or modified for the manufacture, preparation or use of any prohibited drug or plant. It is therefore broader than just ice pipes and cannabis smoking paraphernalia but is not so wide as to cover things designed for non-illicit drug-related purpose, such as cigarette papers or things that are related to illicit drugs but cannot be used for taking them; for example, T-shirts, or drug-related messages on clothing. The bill makes the offences of displaying drug paraphernalia for sale or selling drug paraphernalia to a child or adult equivalent to those currently applicable to the penalties that apply to ice pipes or cannabis smoking paraphernalia. The exceptions to that under the bill are to be prescribed and will exclude not only certain drug paraphernalia or classes of drug paraphernalia, as happens now—mention has been made of hookahs and shishas—under regulation 6A of the Misuse of Drugs Regulations, but also certain people and circumstances; for example, pharmacists participating in needle exchange programs approved by the Department of Health’s Chief Medical Officer. Although it is not currently in the regulations, section 36A of the Poisons Act 1964 also provides a defence. On 21 September this year, Minister Johnson said in the other place that clause 6 would not be proclaimed until the regulations are in place.

The bill also replaces provisions relating to the offence of possession of ice pipes or cannabis smoking paraphernalia that show any trace of a prohibited drug or plant. Again, it is an extension of this offence to have possession of any drug paraphernalia showing traces of a prohibited drug or plant. The same defences that apply currently will apply. However, the bill increase the maximum financial penalty for this offence twelvefold from \$3 000 to \$36 000. The maximum imprisonment penalty is unchanged.

The bill also introduces mandatory sentencing for adults who commit an offence under section 6(1) of the Misuse of Drugs Act, which relates to possession with intent to sell or supply, manufacture or prepare, or sells or supplies, or offers to sell or supply, a prohibited drug. Mandatory sentencing applies also if an offence is committed under section 7(1) when a person possesses or cultivates a prohibited plant or drug with the intent to sell or supply, or sells or supplies, or offers to sell or supply, a prohibited plant that involves selling, supplying or offering to sell or supply a prohibited drug or plant to a child. Conviction for a first such offence will lead to a sentence of suspended imprisonment, conditional suspended imprisonment or actual imprisonment. Conviction for any subsequent offence under section 6(1) or 7(1) that involves selling or supplying, or offering to sell or supply, a prohibited drug or plant to a child will lead to six months’ or more imprisonment, and this cannot be suspended.

Identical mandatory sentencing provisions will apply to adults who commit an offence under section 6(1)(b) of the Misuse of Drugs Act, which is to manufacture or prepare a prohibited drug with the intent to sell or supply; under section 7(1)(a), which is the offence of cultivating a prohibited plant with the intent to sell or supply; and under section 14(1), which is the offence of possessing more than the permitted prescribed quantity of category 1 or 2 chemicals without lawful excuse, if these acts endanger the life, health or safety of a child under 16 years of age. Adults who commit any of the second set of offences I have just listed, if it causes bodily harm to a child under 16 years of age, will receive a sentence of at least 12 months’ imprisonment. Again, this cannot be suspended.

The bill also amends the Bail Act to include in schedule 2 the offence under section 14(1) of the Misuse of Drugs Act of possessing more than the permitted prescribed quantity of category 1 or 2 chemicals without lawful

excuse, but only if this endangers the life, health or safety of a child under 16 years of age. The significance of making it a schedule 2 offence is that the Bail Act mandates refusal of bail for schedule 2 offences, unless there are exceptional circumstances, if the offence was committed while the person was already on bail or on an early release order for another schedule 2 offence. The bill also makes a consequential amendment to the Spent Convictions Act and amends the Working with Children (Criminal Record Checking) Act to include in schedule 2 the offence of selling drug paraphernalia to a child. The significance of this is that a person with a conviction or pending charge for that offence will get a negative notice precluding him or her from working with children unless exceptional circumstances apply.

By way of providing background to this bill, it will implement the Liberal Party's election promise to give courts the ability to impose harsher sentences on dealers who sell or supply illicit drugs to children, wherever this occurs. It also makes it an offence to expose a child to harm or being put in danger of being seriously harmed by the manufacture of illegal drugs or unlawful cultivation of illegally hydroponically grown plants, and it bans the sale of drug-use paraphernalia. The evidence provided in that policy document in support of this is now somewhat outdated but it is alleged that there has been a 11.3 per cent increase in drug trafficking offences and a 24.9 per cent increase in possession offences in WA since 2003. I assume that was four years ago so I am not quite sure what the current data is based on WA Police statistics. I might talk a little later about some of the more recent figures.

Page 7 of the 2006 report of the Mental Health Council of Australia, "Where there's smoke...", states —

The evidence increasingly suggests that regular cannabis use, particularly by those who begin using at a young age, increases the risk of mental illness.

Again, later I will talk about how the statistics on cannabis use have changed more recently. Page 9 of the June 2005 National Drug Strategy Household Survey indicated that 4.5 per cent of WA people aged 14 or over used amphetamines. Figures from the 2006 Australian Institute of Criminology annual report of the Drug Use Monitoring in Australia project indicated that high rates of detainees at the East Perth lockup tested positive for various drugs. The only statistics or research provided in the second reading speech related to clandestine drug laboratories. The minister stated in the second reading speech —

In 2010, the WA Police attended 133 clandestine laboratories in Western Australia. Of these, children were present at the premises, or identified as being a resident of the premises, in 34, or 30 per cent of, cases.

I understand from the second reading speech in the other place that this figure was given as 46 individual children, of whom 22 were present during drug manufacturing and a further 24 were present during preparation or storage. Obviously, we have received this bill from the other place. It is worth noting that clause 9 of the bill was amended in the other place. This amendment introduced section 34(6), which requires the minister to review the operation and effectiveness of the reforms introduced by clause 9 after three years. The provision does not require that review to be tabled in Parliament or otherwise made public. The minister might be aware that there is an amendment standing in my name on the supplementary notice paper that seeks to ensure that that report is tabled directly in Parliament. I am hoping that the house will see fit to support that amendment, which seems to me very uncontroversial but would ensure that the review is tabled in Parliament and made public.

Hon Peter Collier: I think it's an eminently sensible amendment.

Hon GIZ WATSON: Excellent. I am delighted.

Hon Peter Collier: That's me.

Hon GIZ WATSON: We will get to that when we get to that.

With regard to the number of clandestine drug laboratories attended by Western Australia Police, in 2010 to date—this information was compiled over the past two months—the Minister for Police said that 147 drug laboratories were attended by police. Page 17 of *The West Australian* on 23 September suggested that that figure is now 150. In 2010, 133 drug laboratories were attended by police, of which 110 were in the metropolitan area and in 2008 there were either 28 or 24, depending on which copy of *The West Australian* we think is correct. I understand from information received at the briefing that figures relating to the number of children present at these laboratories have only been kept since 2010. The number of children present or resident at these 110 metropolitan labs in 2010 was 46, or 34 cases. Of the 46, 22 were present during manufacture and the remainder were present at some time during preparation or storage, as I said before. When it comes to outcomes of the prosecution of cases in which children were present at these labs, of the 34 cases in 2010, 15 have been prosecuted to date. In one case the accused had not yet been arrested and five more cases had not yet been finalised, leaving nine cases available for analysis. Of these nine cases, the outcomes were as follows: in one case, a community order and a fine; in one case, a nine-month suspended prison sentence; and in the remaining

seven cases, a prison sentence ranging from between 13 months and two years. The available information does not record whether the offence was a first or subsequent offence and, if the latter, whether the child had been present previously. Currently, the presence or otherwise of a child is not an element of the offence, so a sentence heavily weighed by this factor would be liable to appeal.

As to the nature of clandestine drug laboratories and manufacturers, most, albeit not all, laboratories are cobbled-together affairs in which the manufacturers are amphetamine addicts making small amounts for their own personal drug use. That was a quote from the police commissioner, Karl O'Callaghan, on 18 July this year in *The West Australian*. Minister Johnson said in the other place on 21 September this year that almost all manufacturers are users, about 90 per cent of them manufacture primarily for themselves, and the average yield is one gram or less.

Materials to manufacture these drugs are often sourced legally. Most of the pseudoephedrine used in the manufacturing process is sourced legally by addicts buying it over the counter at a pharmacy and circumventing Project Stop, whereby pharmacists ask for identification, keep records and report frequent buyers to police. Again, that information was provided by the police commissioner in an article in *The West Australian* on 28 June this year. Griffith University is currently evaluating Project Stop as it relates to two Australian states but not Western Australia. The final report was expected in August 2011 but to my knowledge has not yet been released, or perhaps I have not been able to obtain a copy at this stage.

The latest figures relating to the rate of drug use are from the 2010 National Drug Strategy Household Survey report published by the Australian Institute of Health and Welfare on 27 July this year. These surveys are conducted at regular intervals. The last two surveys were in 2007 and 2004. The method for the latest survey was more heavily reliant on drop-and-collect questionnaires, which may have improved the veracity. The surveys record recent use of drugs, including alcohol and tobacco, by people aged 14 years and over in all Australian jurisdictions. By comparing the last three surveys, the following percentages refer to portions of the population aged 14 or older. Across all jurisdictions, cannabis is by far the most commonly used illicit drug. Between 2004 and 2007, use of it decreased in almost all jurisdictions. In WA, the figure went down from 13.7 per cent to 10.8 per cent but between 2007 and 2010, use of cannabis, except in Tasmania, went back up again. In WA, as we have already noted, the figure went back up to 13.4 per cent. The WA figure has consistently been the second highest in the country after the Northern Territory. Regarding the age of users, page 102 of the report states —

Since 1998, recent cannabis use has generally decreased in the younger age groups, but either increased or remained stable for the older age groups (40 years or older).

Page 27 of this year's report of the Education and Health Standing Committee, "Changing Patterns in Illicit Drug Use in Western Australia", states —

Between 1996 and 2008, the rate of self-reported cannabis use by older Western Australian school children had reduced by more than two-thirds.

WA consistently had the highest use of methamphetamines but the rate has decreased—4.5 per cent in 2004, 4.2 per cent in 2007 and 3.4 per cent in 2010.

At page 43 of the report, the standing committee states that although the state's prevalence rate in 2007 for amphetamine group consumption seems high at 4.1 per cent, it is in fact a 25 per cent reduction from the rates of the late 1990s and early 2000s.

Turning to other drugs, ecstasy use in Western Australia has dropped slightly from 4.1 per cent in 2004–2007 to 3.7 per cent in 2010. Heroin use has increased by 0.1 per cent in six years, from 0.2 per cent in 2004–2007 to 0.3 per cent in 2010. Cocaine use has increased by one per cent in six years, from 1.2 per cent in 2004 to 1.8 per cent in 2007 and 2.2 per cent in 2010. As would be expected from the figures given for cannabis, it is the most commonly used illicit drug. The use of illicit drugs in WA has consistently been second or third in Australia, after the Northern Territory, with a drop between 2004 and 2007, and a rise between 2007 and 2010—that is, 17.3 per cent in 2004; 16.2 per cent in 2007; and 18.6 per cent in 2010. The 2010 report provides the overall figure for non-medical use of pharmaceuticals, and WA has the highest figure of 5.1 per cent.

In 2010, the Australian Institute of Criminology published its 2008 annual report of drug use monitoring in Australia. In respect of Western Australia, the report provides information regarding testing of detainees at East Perth lockup. The report indicates that 73 per cent of male detainees and 80 per cent of female detainees tested positive for a drug, most commonly cannabis—58 per cent and 53 per cent respectively. The next most common was methylamphetamine—30 per cent and 48 per cent. People often tested positive for multiple drugs—34 per cent and 45 per cent. Most had never been in treatment for illicit drugs—52 per cent and 55 per cent.

As to the outcomes of prosecution of offences involving the sale, supply or offering thereof of a prohibited drug or plant to a child, this year to date there have been 156 charges that have led to 30 convictions; 122 cases are

still pending. Of those 30 convictions, three resulted in a prison sentence—that is, 10 per cent. In 2010, there were 216 charges leading to 150 convictions; 40 cases are still pending. Of those 150 convictions, 58 have resulted in prison sentences—that is, 39 per cent. In 2009, there were 184 charges leading to 141 convictions; 15 cases are still pending. Of those 141 convictions, 28 resulted in a prison sentence—that is, 20 per cent.

I will go into a little more detail around the issues pertaining to the Misuse of Drugs Amendment Bill 2011, one of which is the increased internet sale of drug paraphernalia. If this bill is passed, it seems likely that more drug paraphernalia will simply be purchased via the internet. I understand from the briefing that internet sales of drug paraphernalia will be able to be prosecuted in WA if any element of the sale actually occurs in this state; otherwise, any prosecution would happen interstate if any offence had been committed under its jurisdiction. Given that new drug paraphernalia products will not have drugs on them that could be picked up by drug tests, how will postal or courier services detect these packages? Also, if drug paraphernalia is purchased online from outside the state, in what circumstances can there be a prosecution within WA?

I turn to the health impacts. If this bill is passed, it seems likely that more drug dealers will turn to homemade drug paraphernalia made from, for example, old juice bottles, pen tubes, garden hose and aluminium foil—there are many ways in which one can consume drugs.

Hon Peter Collier: Apparently, yes.

Hon GIZ WATSON: There are multiple ways that people can —

Hon Kate Doust: Make them.

Hon GIZ WATSON: — make it or smoke it or whatever, as far as I understand. This bill may make it more risky to health than shop-bought products because of the toxic fumes produced—I am particularly aware of using plastics in that process.

The 2008 report “Cannabis: a harm reduction perspective”, by Andrew Bennett, published by the European Monitoring Centre for Drugs and Drug Addiction, notes that, from a health perspective, not all methods of cannabis administration are the same, with the smoking of cannabis being the riskiest method. Products such as vaporisers designed for cannabis use by people who use it therapeutically will not be able to be sold. I am sure members are aware that in various states in the United States people can be registered to use cannabis for managing chronic pain and nausea. They have a vaporiser that vaporises the material, and therefore they do not have to inhale smoke. Vaporisers produce less smoke than easily made bongs and joints, and therefore they appear to have fewer adverse respiratory effects. The 2007 Californian report “Vaporization as a smokeless cannabis delivery system: A pilot study” refers to an 18-subject study in which a comparison was made between the delivery of cannabinoids in vaporisation and in cigarette form. The study found that the amount of tetrahydrocannabinol made available is comparable between the two different methods, but the vaporisation of marijuana does not result in exposure to toxic fumes, and therefore it is expected to be much safer than smoking marijuana cigarettes. It was considered that further investigation was warranted in clinical trials of cannabis for medicinal purposes. I simply want to point out that one of the consequences of making the possession of certain paraphernalia an offence could well be that those people who continue to use marijuana will use riskier methods of inhaling or ingesting it.

As to the question of the reversal of the onus of proof under proposed section 7B(5), which is contained in proposed clause 6, the current definitions of “cannabis smoking paraphernalia” and “ice pipe” exclude anything prescribed or belonging to a class prescribed. Under the bill, the definition of “drug paraphernalia” does not build in any exceptions, but instead makes it a defence to establish that the person, thing or circumstances fall within what is prescribed. This means that the onus will move from the prosecution having to establish that the definition is met, to the defence having to establish that an exception to that definition applies. The justification given for this is that the police will not prosecute if they think a good defence is available. I respectfully suggest that that misses the point. We are talking about the principle of where the onus should lie after a decision has been made to prosecute and the case has come to the court for determination. At that point it is, and should remain, for the prosecution to prove beyond reasonable doubt that the accused was displaying or selling something she or he was not allowed to.

As to the increased penalty for possession under proposed section 7B(6)—again, in proposed clause 6 of the bill—the second reading speech gives the reason for the twelvefold increase as being that section 41(6) of the Sentencing Act 1995 states —

If the court is a court of summary jurisdiction and decides to fine an offender, the maximum fine it may impose is to be worked out as follows:

- (a) if the offender is a natural person:

Maximum fine (\$) = Statutory penalty (in months) x 1000

Hence, the maximum term of imprisonment for this offence being three years or 36 months, 36 multiplied by 1 000 makes \$36 000. However, section 41(1) makes it clear that —

This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that imprisonment but not a fine may be imposed.

This provision is not of that type, and the penalty can be a fine, prison or both. Further, although this calculation accurately reflects the penalties for some offences, it is certainly not the general rule even within the Misuse of Drugs Act. For example, under section 14, which is “Possession of certain substances or things”, the penalty is five years’ imprisonment or \$20 000 or both, not \$60 000. On summary conviction, the penalty is three years’ imprisonment or \$12 000 or both, not \$36 000. Under section 27B, which relates to divulging confidential information, the penalty is seven years’ imprisonment and \$20 000, not \$84 000. Under section 34, the penalties vary for various offences—I will not go through them. There is therefore an internal inconsistency. If that is the argument for an increase from \$3 000 to \$36 000, it is not even consistent within the existing act.

By way of comparison, I requested and was given a list of WA offences that impose a \$36 000 fine as a penalty. The offences included on the list are of a rather more serious nature than possessing drug paraphernalia with traces of a prohibited drug or plant on it. For example, one of the offences with a similar penalty is in section 304 of the Criminal Code relating to the omission of an act that it is a person’s duty to do, or unlawfully does an act that causes bodily harm to a person or is likely to endanger a person’s life, health or safety. That is the comparison with offences that attract a fine of that scale.

I also requested and was given a list of the sorts of penalties that are currently being handed down in courts for this sort of offence. These do not indicate any need for an increase over the current \$3 000 maximum. Last year the average fine for offenders who received fines, rather than any of the other orders available to the court to deal with the matter, was \$330.92 for possession of utensils associated with smoking a prohibited drug or plant, and \$465 for possession of utensils associated with the manufacture or preparation of a prohibited drug or plant for smoking.

The next point I want to raise, which was also raised by Hon Kate Doust, is the question of the mandatory provisions under proposed subsections 34(3), (4) and (5) contained in clause 9 of the bill. The Greens (WA) policy supports the application of strict penalties for selling and supplying illicit drugs, with the exception of needle exchange programs; however, mandatory sentencing is the wrong approach for a variety of reasons. Mandatory sentencing under this bill is highly likely to impact heavily on people with mental health issues. It is well established from prisoner statistics that people who commit crimes are highly likely to have mental health problems; for example the report titled “The health of Australia’s prisoners: 2009”. The report titled “Thematic Review of Offenders Health Services” by the Office of the Inspector of Custodial Services made this point, but also that prisoners’ mental health problems often co-exist with drug problems. For example, at page 126 of the “2010 National Drug Strategy Household Survey report” about methamphetamines it states —

Recent users were more than twice as likely as non-users to have been diagnosed with or treated for a mental illness in the previous 12 months ... and this proportion increased between 2007 and 2010 ...

The report of the Office of the Inspector of Custodial Services cited above also refers to the frequent co-existence of drug issues and mental health issues. That report also describes the limitations of services provided by prisons to address these problems.

Secondly, the mandatory sentencing provisions, although they may punish the offender and take him or her out of circulation temporarily, seem unlikely to be effective as a deterrent. The April 2011 paper of the Sentencing Advisory Council of Victoria titled “Does Imprisonment Deter? A Review of the Evidence” is the latest report to suggest that increasing the certainty of apprehension and punishment is a deterrent, but that increasing the severity of penalties does not produce a corresponding increase in deterrence. Offenders do not necessarily make a rational decision to offend; indeed, if they are drug addicts, as the Commissioner of Police and the Minister for Police say most of those involved in clandestine drug laboratories are, it seems very unlikely. By far and away the majority are producing amphetamines for their own use. Not only that, the report states that putting offenders in prison can increase reoffending rates compared with offenders who receive different sentencing outcomes rather than the reverse. In particular, this bill effectively proposes that people who commit drug offences should be put in prison; that is, into a community of people who are more likely than other communities to have drug issues and where, according to the evidence given by the Department of Corrective Services to the Education and Health Standing Committee on 7 August 2009, most people who need treatment programs for their drug addictions do not receive assistance. That was stated at page 143 of that committee report. The government has provided no evidence that courts are not sentencing appropriately in these cases when all the circumstances are taken into account. I requested this evidence at a briefing but none appears to have been provided.

If the intention is to match public expectation, the public is less punitive than might be supposed. On 18 August 2009 during debate on the Criminal Code Amendment Bill 2008, I discussed at length the research that exists to show this. Without repeating what I said then, I note that in February 2011 yet another report confirmed this. This is a report of the Australian Institute of Criminology, which appears in its series titled “Trends and issues in crime and criminal justice” under the subheading “Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study”. This report sets out the results of a study involving 698 jurors from 138 trials between September 2007 and October 2009. The jurors were reasonably representative of the general population. The study found that more than half of them suggested a more lenient sentence than the judge imposed, and 90 per cent of them considered the judge’s sentence to be appropriate. This is consistent with other research which indicates that while the public may give punitive responses to abstract questions regarding sentencing, the more informed they are about a particular case, the more likely they are to regard the sentence imposed by the court as appropriate. The study found that even in sentences for drug offences, with which jurors were less likely to be satisfied than those for other offences, 35.1 per cent felt that the sentence given in the case was very appropriate, 47.9 per cent felt it was fairly appropriate, 17 per cent felt it was fairly inappropriate and none felt it was very inappropriate. Leaving out the 35.1 per cent who felt the sentence was very appropriate, the study then asked the rest who felt the sentence was either fairly appropriate or fairly inappropriate what they felt the sentence should have been, and 46 per cent of those came up with a more severe sentence than the court.

Further, although the Drug Court process will still technically be available, as I understand it, surely much of the carrot part of its carrot-and-stick approach will be lost, because the best sentencing outcome an offender can hope for will be a suspended prison sentence for a first offence, regardless of how well the offender does under supervision and program requirements.

In respect of any subsequent offence, referred to at proposed subsections 34(3)(b) and (4)(e) of the bill, I understand the intention is that this refers to an offence committed after the person has been sentenced for a first offence. That is, firstly, the person commits one of these offences; secondly, the person is sentenced for that offence to suspended imprisonment, conditional suspended imprisonment or actual imprisonment; thirdly, the person then commits a further one of these offences; and, fourthly, the person is sentenced for that offence to mandatory imprisonment of at least six months, not suspended. Thus the more severe penalty applies to recidivists. However, I am concerned that the proposed subsections can be interpreted so as to require the court to bypass the first option and go straight to mandatory imprisonment of at least six months, not suspended, in other situations; for example, when a person is sentenced at the one time for multiple offences committed on different dates.

Finally, proposed subsection 34(5) assumes a degree of bodily harm caused to children at the manufacturing, preparation or cultivation stages of the drug process that merits a sentence of 12 months’ imprisonment, not suspended. In respect of clandestine laboratories, a 2003 United States report by the US Department of Justice titled “Children at Clandestine Methamphetamine Labs: Helping Meth’s Youngest Victims” lists the direct dangers to children at those stages as including the risk of fires and explosions; for young children especially an increased likelihood of inhaling, absorbing or ingesting toxic chemicals or drugs or contaminated food; and, due to their stage of development, an increased vulnerability to the effects of toxic chemical exposure.

There is an inherent risk of severe bodily harm associated with the creation process for methamphetamines quite separate from harm if a child actually consumes the drug; whereas cannabis cultivation is different. There is certainly a risk of severe bodily harm associated with the type of large-scale operations that involve dodgy electrical set-ups and/or traps surrounding the crop. However, for a small-scale cultivation, sufficing for the grower and a friend or two, the risk of bodily harm to a child from cultivation is the same as for ordinary gardening, unless the drug is actually consumed by the child. Indeed, in the other place, the minister was unable to provide a single example of a case in which cultivation of cannabis had led to a child suffering bodily harm. The only example related to harm that he could give was caused by a child actually ingesting the drug. It is not a proportionate response for cannabis growers to be compulsorily imprisoned for 12 months if a child trips over a garden bed containing cannabis and sustains a minor injury, and in fact the problem is that the bill does not make this differentiation.

For these reasons we consider it more appropriate that the court be able to take all the circumstances into account in deciding on an appropriate sentence. Surprisingly enough, we seem to be incredibly consistent in opposing mandatory provisions.

Hon Donna Faragher: No!

Hon GIZ WATSON: A lot of people agree with that position, including a substantial part of the legal fraternity in the courts. However, these circumstances should be able to include the presence or impact on a child as an aggravating offence, as we know it does currently. If the bill had simply done this, we would clearly have been happy to support it. It is a fundamental principle of criminal law that an offender should not be subject to a more

severe penalty than applied at the time he or she committed the offence. The bill says nothing in this regard. However, section 10 of the Sentencing Act 1995 says —

If the statutory penalty for an offence changes between the time when the offender committed it and the time when the offender is sentenced for it, the lesser statutory penalty applies for the purposes of sentencing the offender.

It is my understanding that this means that the bill's mandatory sentencing provisions will apply only to offences committed after the bill becomes law, with one exception; that is, if when the bill is passed a person has already committed a first offence of the type in proposed section 34(3) and (4), and after the bill is passed the person commits a second offence at that time, then the court's sentencing options will be limited to a mandatory prison sentence, not suspended, of at least six months if the prosecution can show, for example, from the statement of material facts from the former offence, since it will not be obvious from the nature of the charge, that the former offence impacted on the child in a way described in those sections. I ask the minister in his response to advise whether my understanding of that provision is accurate.

We have a range of alternatives that we would suggest to mandatory sentencing. We strongly support amendments to the act, making all of the circumstances in proposed section 34(3), (4) and (5) the circumstances of aggravation attracting a higher maximum penalty. We have no problem with that; however, we will not support mandatory sentencing which prohibits courts from taking all relevant circumstances into account.

Increasing the certainty of apprehension and punishment will, hence, act as a deterrent. That is a key point. Research shows that it is the likelihood of apprehension that is the major deterrent. The forthcoming evaluation of Project Stop interstate may offer some useful recommendations in this regard.

The May 2000 evaluation report by the Crime Research Centre for the Drug and Alcohol Office refers to WA's pre-sentencing opportunity program, the Indigenous diversion program and supervised treatment intervention program. It indicates that about 30 per cent of offenders who completed any of these programs reoffended within 12 months compared with 86.9 per cent of offenders who did not complete these programs. Key findings also included a significant reduction in the cessation of cannabis and amphetamine use post-program. However, lack of treatment resources, particularly residential treatment facilities, have been a problem. That is where we need to put our efforts. If the government wants to prevent people from reoffending and to change the statistics from 86.9 per cent reoffending within 12 months to 30 per cent, then it needs to adequately fund these programs. I have spoken in this place before about the lack of availability of programs within the prison system. It is very cheap to introduce a piece of legislation; the government does not have to invest any money and it looks really great: government tough on drugs!

A recent report told us about the amount of drugs in our prison system. I cannot tell members how many times in this place we have debated how tough a government is going to make it in the prisons and that it would keep alcohol and other drugs out of our prison system, yet prison is one of the places where people can easily get drugs. If the government wants to do something about drug addiction, it can get the drugs out of the prison system. A cheap piece of legislation that looks like it is filling an election promise is not worth much at all.

Recently, in its ninth report, the Education and Health Standing Committee discussed therapeutic communities and residential rehabilitation. At page 133, the report states —

These enhanced programs —

Which deal with social support issues as well as drug issues —

are significantly more effective than traditional services. Clients treated in enhanced programs showed significantly less substance abuse, fewer physical and mental health problems and better social functioning.

A report by the Matrix Knowledge Group titled "The economic case for and against prison" based on research in the United Kingdom in 2007 compared various interventions with prison alone. Page 7 of that report states that the offenders who received residential drug treatment were 43 per cent less likely to reoffend after release than comparable offenders receiving prison sentences. This saved taxpayers £88 469. Page 8 of that report gives a comparison between prison and supervised drug treatment. The report found evidence that the offenders who were supervised and accessed drug treatment were 14 per cent less likely to reoffend after release than comparable offenders receiving prison sentences. Again, this saved taxpayers round £41 000. A comparison of prison with drug treatment against prison alone found evidence that the offenders who got drug treatment in prison were 30 per cent less likely to reoffend than comparable offenders receiving only prison sentences.

I refer to clause 15, which will amend the Working with Children (Criminal Record Checking) Act. As already noted, the effect of this clause is that a person with a conviction or pending charge for the offence of selling drug paraphernalia to a child will get a negative notice, precluding them from working with children, unless

exceptional circumstances apply. It will apply not only to adults who sell drug paraphernalia to children, but also to people who as a child get criminal records for selling drug paraphernalia to another child. Such people, though they have long grown up, will not be able to get a job working with children, unless exceptional circumstances apply. Growth in maturity and responsibility is a normal part of a child's development into an adult, and it is hardly exceptional; therefore, it is not clear to me how such a person could establish that exceptional circumstances apply. Basically, we know, with offences where the offender is a child, they usually grow up to not reoffend. But if the test is that they have to show that exceptional circumstances apply, I am not sure that just the natural maturing that occurs as children and teenagers become adults would be judged to be an exceptional circumstance.

With those comments, the Greens strongly oppose the mandatory sentencing provisions within this bill. We suggest that there are many, many other ways to deal with drug use in the community to produce a safer community and a healthy community. Unless we seriously turn our minds to the alternatives to prison sentences for drug addicts, then time and again we will see the government bringing bits of legislation into this place that increase the penalties and prison sentences and remove discretion. The government will find it will get the same number of drug addicts in our prison system, unless it actually deals with the underlying problems which cause people to turn to illicit drugs and it treats their addictions. I have already said that we would not oppose increased penalties for risks to children. We do oppose the mandatory sentencing nature of this bill.

HON DONNA FARAGHER (East Metropolitan — Parliamentary Secretary) [3.18 pm]: I rise today to speak to the Misuse of Drugs Amendment Bill 2011—obviously not as lead speaker for the government, but to express my support for the bill and as the person who was responsible for the election commitment that is honoured through this legislation. For those reasons, I feel that it is incumbent on me to make a few observations. I want to spend a little time on the main elements of the bill. As has already been outlined by the other two speakers, these elements relate to the protection of children from endangerment or harm as a result of drug manufacture or cultivation and the ban on drug-use paraphernalia and the increase in penalties for those people who sell or supply drugs to children.

In speaking to this bill, I have listened closely to the comments that have been made by the opposition. I am not referring to Hon Kate Doust—rather to some of her colleagues in the other place. Some criticisms have been levelled at the government, particularly about the increase in the number of clandestine drug labs and the time taken for the bill to come into the Parliament. It is important for me, given that I have some history with how this came about, to ensure that the record is accurate on the issues before us and, indeed, the history behind the election commitment, which is fulfilled through this legislation. The reason the main elements of this bill were a key plank of the Liberal Party's 2008 election policy was that we, unlike the Labor Party, were committed to delivering them. Whilst I do not want to reflect on debate in the other place —

Hon Kate Doust: You are.

Hon DONNA FARAGHER: It has been said outside the chamber and it has also been said in the press. The shadow Minister for Police, Margaret Quirk, made an observation that the opposition had advocated this and lobbied the government to act decisively on this issue. I find that somewhat curious, given that the Labor Party had a number of years to act on these matters and did not.

Hon Kate Doust: It might come back to haunt you when you say things like this.

Hon DONNA FARAGHER: I think Hon Kate Doust needs to know the facts behind how this legislation came into being. That is no more evident than with the issue of drug endangerment. While I will talk more generally on this issue, there is a history to it. Drug endangerment offences relating to children have been canvassed at ministerial level since at least 2003. I remember well, as the then adviser to the then commonwealth Minister for Justice and Customs, when this issue was first raised at a Ministerial Council on Drug Strategy. Indeed, the communiqué from that ministerial council meeting, held on 21 November 2003, states —

Ministers were given a presentation by WA on the Drug Endangered Children Program currently in operation in the USA to protect children from the dangers of being exposed to the lethal chemicals and by-products of clandestine drug laboratories.

Following this, the council agreed that specific offences addressing the endangerment of children in illicit drug laboratories would be developed. The issue was then pursued through the Standing Committee of Attorneys-General in 2004. In 2005 the commonwealth introduced and passed the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005. That legislation included additional offences targeting those who endanger children during the drug manufacturing process. Similarly, the New South Wales government introduced and passed the Drug Misuse and Trafficking Amendment Bill, which included offences similar to those in the commonwealth legislation. That same government also went one step further, introducing and passing another bill which created a new aggravated offence of cultivating a prohibited plant by enhanced

indoor means in the presence of children or where a child was endangered or harmed. The reason given by the then Labor government in that state was presented in the second reading speech of Minister Carmel Tebbutt, in which she stated —

The aggravated offences take the same form as those included in the recent Drug Misuse and Trafficking Amendment Bill 2005, and recognise the inherent risks to children of exposure to the hydroponic process, such as fire, electrocution, extreme heat, dangerous chemicals, insecticides and fumes as well as toxic gases and airborne bacteria.

I entered this place in 2005, and in my maiden speech in this house I said —

In 2002 some 8 000 clandestine laboratories were detected in the United States, of which nearly 3 000 involved the presence of children. Some 40 per cent of those children present were found to be affected by the drugs themselves or the chemicals that produced them. There were also cases of injury and even death. Australia must not go down a similar path. While I acknowledge the work being done in Western Australia and nationally to combat this particular drug endangerment problem, with the increasing trend towards these insidious drugs, it is incumbent upon governments at all levels to continue to respond swiftly and effectively for the wellbeing, health and quality of life of Australia's children and young people.

Sadly, while acknowledging the work of the then government in my first speech in this place, I became somewhat disillusioned with its commitment over time. Indeed, nothing happened in the entire term of the Gallop–Carpenter governments, despite articles appearing in the paper with headings like “Boys slept in drug lab caravan” and “Children at risk over ‘drug find’ in crashed caravan”. There was a brief mention of a possible bill to address the exposure of children to drug manufacture in the then government's action plan in response to the Western Australian Illicit Amphetamine Summit, which was released in 2007, but again the bill never appeared in either house. Although the then WA government made that initial presentation to the Ministerial Council on Drug Strategy back in November 2003, it never actually delivered on what it promised.

In turning to the issue more generally, I have to say that—I know everyone will understand this—the issue of illicit drugs, particularly when it involves children, is one that I have a particularly strong commitment to address. For me, it is one thing for an individual to choose to put their own life at risk by manufacturing illicit drugs—I wish they did not, but they do—but it is quite another when, through their own actions, they allow children to be placed in danger. I simply hate the fact that a child, through no fault of their own, can be caught in a hopeless situation where lives can and are endangered or harmed simply in the pursuit of illicit drugs. It is said that many of these manufacturers are addicts themselves. Hon Kate Doust and Hon Giz Watson indicated this. I acknowledge and understand that. We must always make sure that we have treatment and prevention options as well as education to go hand in hand with law enforcement. I think that is extremely important. Members will not get any disagreement from me about that. The issue that is sometimes lost is that, for the life of me, I cannot and will not accept that a person's responsibility to their children or indeed someone else's children can be abrogated simply because they are an addict. No child should be left in a situation like this.

Hon Kate Doust: Will you take an interjection?

Hon DONNA FARAGHER: No, I will just say what I have to say at the moment.

Hon Kate Doust: I was just going to add something to what you are saying; that was all.

Hon DONNA FARAGHER: Okay.

Hon Kate Doust: I do not disagree with what you are saying, but part of the issue is that when people are using this type of drug, I do not think they are actually thinking through the implications of their actions in terms of having children around. I am not saying that this is an excuse; I am just saying that we need to take that into account—that they are so obsessed or so much damage has been done to them that they may be oblivious of those around them.

Hon DONNA FARAGHER: I hear what Hon Kate Doust is saying. That excuse is sometimes used, and yet a child is harmed or indeed killed by virtue of being part of the process through no fault of their own. That is just not acceptable. I will give a couple of examples. I accept that everybody in this house on both sides of the chamber would agree that any harm to a child is wrong, but there are elements of this bill with which we have some differences. I want to refer to an article entitled “Justice Matters—Saving Drug-Endangered Children”. The article is a transcript of an interview with Commander Lori Moriarty, who is the senior vice president of education and outreach with the National Alliance for Drug Endangered Children. She said in part —

I did 20 years in law enforcement ... I became a commander of an undercover drug unit.

She later said —

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

... there was a particular case that was the “Aha” moment for me, when we went to a meth lab and our entire team was all geared up for the hazards of the lab and decontamination. And when we went into the home, we were all wearing self-contained breathing apparatuses and we were going to be in there for maybe 8 hours, and then when we turned the corner during the raid, we found a 9-month old sitting on the floor of the room where a meth lab was with a diaper and it was the—you know, if a picture could paint a thousand words—when you saw a child coming out in a diaper and SWAT officers in self-contained breathing apparatuses, my thought was, “Man, what has happened to this child for 24 hours a day, 7 days a week living in this environment?”

The simple fact is that the manufacture of amphetamine-type stimulants, including methylamphetamine, involves the use of often volatile and highly toxic chemicals, including—as Hon Kate Doust and I think Hon Giz Watson referred to—solvents, insecticides, ammonia, ethanol, hydrochloric acid, sodium hydroxide and sulfuric acid. These chemicals, with all their toxic fumes and gases, are used at various stages of the manufacturing process from precursor extraction, in the case of amphetamines, to the actual manufacture of the drugs. These same chemicals, often when exposed to air, heat and naked flame, are susceptible to fire, explosion and corrosion. Research also shows that children are particularly vulnerable to developing serious side effects as a result of exposure to these chemicals due to their lower tolerance to chemical toxicity, their developing central nervous system and higher metabolic and respiratory rates. Many cases can be cited, particularly from overseas, of children found in illicit drug laboratories testing positive to high toxic levels of chemicals used in drug manufacture. Young children inevitably crawl here, there and everywhere. I have to say I am finding that out at the moment with a little baby who will turn 11 months next week —

Hon Peter Collier: And she’s gorgeous.

Hon DONNA FARAGHER: She is a lovely little girl.

Young children inevitably put things in their mouths and they do a range of other things —

Hon Kate Doust: Up their noses, too.

Hon DONNA FARAGHER: I still have that to look forward to, I think!

Hon Kate Doust: It’s a scary time when you’ve got to go to the doctor for that one.

Hon DONNA FARAGHER: These and a range of other child behaviours mean children inevitably put themselves in danger. I refer to another article from the US Department of Justice, which is titled “Dangers to Children Living at Meth Labs”. The article goes through a number of the issues that I have just referred to, but also states —

Baby bottles may be stored among toxic chemicals. Hazardous meth components may be stored in 2-liter soft drink bottles, fruit juice bottles, and pitchers in food preparation areas or the refrigerator. Ashtrays and drug paraphernalia (such as razor blades, syringes, and pipes) are often found scattered within a child’s reach, sometimes even in cribs. Infants are found with meth powder on their clothes, bare feet, and toys.

How anyone could think that was acceptable is completely beyond me. Burns, blast injury, electrocution, severe irritations, infections, lacerations, serious eye injury and other harms are associated with such drug manufacture. As the article that I mentioned stated, many children test positive also to the prohibited drugs, and disturbingly, as we know, there are cases of death. It must also be remembered that these labs are often found in not only residential premises but also garages, caravans and motel rooms. Drug manufacturers will seal windows and restrict ventilation to reduce the likelihood of detection. Laboratories that are detected are often found with, amongst other things, firearms and other prohibited drugs. They also present significant risks to persons living in or in close proximity to those laboratories. Clearly, such illegal operations put children and young people, as well as others who might be around, at serious risk.

With seizures of clandestine drug laboratories continuing, action is needed to significantly strengthen the penalties for those who place innocent children and young people in danger. I recognise that the Misuse of Drugs Amendment Bill provides for a minimum term of imprisonment of 12 months in cases in which a child is harmed. I think that needs to be remembered; that penalty comes into play when a child has been harmed, for both a first and subsequent offence. After a second or subsequent offence, a person who exposes a child to harm will receive a minimum mandatory jail term of six months. Again, it is for a situation in which a person has come before the court for a second or subsequent offence after exposing a child to harm; that is the reason for that provision.

Although I accept this aspect of the bill, it remains in my view—perhaps this comes to issues surrounding aggravated offences—that we must also send a very strong message, an unambiguous message indeed, to those offenders who currently would inevitably receive a jail term because of the severity of the drug manufacture and

who also harm or expose a child to harm. I will give a hypothetical example to explain this further. A person engaged in a significant illicit drug manufacturing operation is caught by the police, goes through the process and receives a significant penalty, say, six or seven years' imprisonment. In this instance, having a minimum mandatory term is of no consequence because the reality is that they will get a jail term in any event. If that person, by engaging in that drug manufacture also exposes a child to harm, or indeed that child is harmed, it is my very strong view that that person should receive a more significant penalty. Although they will get a jail penalty for the drug manufacture, it should be enhanced because of that. It is my very strong view that the court must have regard to the involvement of children in these cases and a tougher sentence should be imposed. In effect, it would mean that for cases in which the court will already impose a term of imprisonment for offences of drug manufacture, a longer term of imprisonment will be imposed as the seriousness of the offence, if I can put it that way, has increased because a child or children were involved. I only mention this and I am confident that the courts would inevitably do just that.

With the time remaining, I will turn to the other two key elements of the bill; first, the ban of all drug-use paraphernalia, such as cocaine kits. Again, I am pleased to see the relevant clauses that give effect to this in the bill. Time and again in this place while in opposition I asked questions of the then government about whether it would ban such kits. Time and again, I was given non-answers. I will go through a couple of those answers starting from 2005. I will not go through the questions asked, but it is all the same. This answer from Hon Sue Ellery states —

The Drug and Alcohol Office has completed a review of legislative options nationally and is currently working with the Western Australia Police Service to make recommendations on the most robust approach for WA.

On 14 March 2006, another year on, I was told, “The matter will be considered by cabinet in the coming weeks”. In April 2006, I got the answer, “This matter is under review by the Minister for Health”, and so I am not sure whether it ever went to cabinet. On 6 December 2007, the answer stated —

The government will consider the technical report of the statutory review of the Cannabis Control Act 2003.

Not a lot happened. It has always been my argument that it is ludicrous to have a situation in which a drug is illegal, yet the kits used to take it remain legal. In my view, that sends a very wrong message to the community, particularly children and young people. The previous government had the ability to ban these kits years ago. Among those answers Hon Sue Ellery gave, the Labor government outlined how that could be done. However, like the drug endangerment offences, it did not do that. I am very pleased that that situation will finally be rectified by this bill.

The final aspect I wish to speak about is the harsher penalties for those who sell drugs to children. I believe that this is a particularly important part of the bill. In 2007, the Labor government stated it would introduce legislation to amend the Misuse of Drugs Act to include a provision for court sentencing to take into account whether, firstly, the sale or supply was to a child; secondly, whether it took place at or near a school or public place where children are regularly present; and thirdly, whether it took place at or near a licensed premises. Although again no bill came before the house, I was supportive of that move. However, I felt at the time that it did not go far enough. From my perspective—I think everyone in the house would agree—it should not matter where a child is; it is not appropriate for a drug dealer to sell or supply drugs to any child, irrespective of the location, whether it is at a school, at the corner shop or wherever. This bill deals with that. I reiterate my support for the bill because it places the safety of Western Australia's children and young people first in the fight against illicit drugs, particularly illicit drug manufacturing.

I will conclude by recounting to the house a story that I believe sums up very well the reason that this bill is so important. Again, it is taken from a United States website and quotes Mr Ronald Mullins of the New Mexico State Police. Mr Mullins is very involved in the drug enforcement area and states —

“There was a case of a woman and her boyfriend who were both meth cooks and had a drug lab in their home. They were getting high on meth and hadn't slept for two days. When they finally crashed out, their 18-month old daughter was thirsty and went into the kitchen to find something to drink. She saw the glass jars filled with red, orange, and blue liquids and thought it was a soft-drink instead of toxic chemicals. She put it to her lips and started to drink from it. She screamed as the liquid burned through her stomach and esophagus. She dropped the jar and spilled more liquid into her lap, which caused more burns to her body. The couple dropped the little girl off at the emergency room and fled the scene.”

No child, whether they are in the United States, Australia or anywhere else, should have to put up with that kind of abuse. No child should have to die because of illicit drug manufacturing. Sadly, some do. They are the innocent victims of a terrible scourge and it is high time that we passed laws in this place to help protect them.

HON COL HOLT (South West) [3.43 pm]: I always find it incredibly interesting to listen to debates of this type that argue both sides of the coin. I think Hon Giz Watson offered a lot of well-researched insight into aspects of the Misuse of Drugs Amendment Bill 2011 which we might not have considered but which we should consider when in government and must provide a response to. Often it is the case of finding a balance between what we do here, which is about legislation, and what we do as a government, which are all the policies we implement and our attempts to address community concerns or issues that may not be legislatively driven but are driven by budgets and the general approach of ministers in government. I find it incredibly interesting that arguments for both sides are presented so well.

The National Party will support the bill. We recognise that this was a Liberal Party election commitment. I do not think anyone can be in doubt that the intent of the bill sends a very clear message to people involved in the manufacture of drugs, especially that part of the bill that refers to putting children at risk. There is no doubt in my mind that this bill sends a clear message to those people. The question that is often raised, which Hon Giz Watson talked about, is: how premeditated are the decisions that drug manufacturers make?

Hon Kate Doust: They are only focused on one thing.

Hon COL HOLT: I think the member is probably right, but I also think that some people do make premeditated choices about what they do, how they manufacture drugs and who is around at the time. I think this legislation is different from some of the other legislation involving mandatory sentencing that we have discussed in this place previously because there is an element of premeditation. An offender can receive a suspended sentence for the first offence but a mandatory sentence is imposed for committing a second offence. That sends a clear message to society that our children are precious and that we should protect them.

The National Party also has figures on clan lab busts in which children were present that are a little different from the figures Hon Giz Watson quoted.

Hon Giz Watson: Mine are from the Minister for Police in the other place.

Hon COL HOLT: It might just be a different time frame. The numbers that are coming through that allow us to pull apart the offences and charges in which children were present are pretty shallow. We will have to wait and see how that pans out. Even our preliminary look at those figures suggests that most people who manufacture drugs in that situation and who appear before the courts are convicted and sentenced to imprisonment. In one way I suspect that this legislation will not act as a deterrent, if that is already occurring and offenders are being put away and the children are protected from the offender. There may be mitigating circumstances about how the family is supported post-sentencing, but again that comes back to how we act as a government and as a society to support the children in those circumstances who find themselves potentially without a guardian. How do we cater for their needs in a safer environment than the one they were exposed to? I think the mandatory sentencing component of the bill is very interesting. On the one hand, I do not think we need it because the courts are doing their job. On the other hand, it is about sending a very strong and clear message, which this bill definitely does, to those who are in that situation so we make sure they know the consequences of committing a second offence.

I am very pleased that the other house moved an amendment to include a review clause in the bill, and we are encouraged by that. Given some of the figures we have looked at, we believe there may not be a need for mandatory sentencing down the track, but we will look forward to the findings of that review. We will support the amendment on the supplementary notice paper that Hon Giz Watson intends to move. If there is to be a review, the bill must come before Parliament. We are the ones who are debating these matters and we are interested to see how the mandatory sentencing issue plays out in the implementation of that policy and the reality of addressing those issues. In this case, it is about children and drugs. We will support Hon Giz Watson's amendment and at the same time we will support the bill.

HON PETER COLLIER (North Metropolitan — Minister for Energy) [3.49 pm] — in reply: I thank all members for their contributions. I appreciate the reasons given by members of the opposition—the Labor Party and the Greens (WA)—as to why they will not be supporting the Misuse of Drugs Amendment Bill 2011. Obviously, the government does not agree with those reasons. Personally, I certainly do not. I have had a fair bit to do with drug education, not just throughout Western Australia, but also the nation. Anything we can do to send a very unambiguous message to the community at large that drug taking is unacceptable is very palatable to me. In essence, this legislation cracks down on drug dealers who sell or supply illicit drugs to children, protects children from endangerment and harm as a result of drug manufacture and cultivation, puts a ban on the sale of illicit drug use paraphernalia, and contains consequential amendments to other legislation. Throughout a suite of bills we are trying to ensure that we send that unambiguous message that drug usage, drug selling and drug provision, particularly to children, is unacceptable. I think we all agree with that. I do not think there is any dissent from that from the opposition benches and members of the Greens as well. It is how we do it when there is a bit of discord.

One of the most compelling events to occur in recent months with regard to this issue was the arrest of a 14-year-old boy in Bali for a very, very small —

Hon Kate Doust: That's not a clan lab.

Hon PETER COLLIER: Let me finish. It is just with regard to public acceptance of drug use and anything to do with drug use—any method that we can use to stamp out drug usage, drug provision and drug manufacture as being completely unacceptable. I do not think anyone in this chamber would agree with the notion of that 14-year-old boy going to jail. I have seen two polls relating to that issue in recent newspapers. The question was consistent in both instances, asking readers whether they agreed that the 14-year-old boy should go to jail. One poll had 65 per cent of people voting yes and the other one had 69 per cent voting yes, which is extraordinary. But there is a general perception in the community that anything relating to the tolerance of drugs is unacceptable—we all agree with that; it is just a matter of how we get there—whether it be with drug laboratories, drug manufacture or drug distribution. We on this side of the chamber will do all that we possibly can to send an unambiguous, transparent message to drug dealers, users and manufacturers in the community that their illicit trade is unacceptable, not just to the government, but to the community as a whole.

I will now go through a number of questions that were raised by Hon Kate Doust and Hon Giz Watson, in particular. Anything that I do not get through or that I am a little deficient on in terms of a response can be dealt with in the committee stage. Hon Kate Doust asked what percentage of clan laboratories detected are set up by people producing drugs for personal use. It is around 90 to 95 per cent at this stage. What types of equipment are used in drug manufacture? It can be sophisticated laboratory equipment, but it is generally any readily available containers et cetera. I think Hon Giz Watson outlined a number of areas in which people are becoming more inventive in the processes.

Hon Kate Doust: There is a checks-and-balances arrangement for purchase or use of the sophisticated utensils that are used.

Hon PETER COLLIER: I think people are becoming more inventive, though.

What happens to the children who are found in clan labs? WA Police engaged the Department for Child Protection very early in the process. Hon Kate Doust also asked whether hookahs and shishas, which are currently excluded under the Misuse of Drugs Act, will continue to be excluded. Yes, they will. Regulations will be made under proposed section 7B to continue this exclusion. What other drug reforms is the government looking at? The government is closely monitoring the situation relating to emerging synthetic drugs and will progress amendments if need be. We are also looking at measures to limit access to various precursor materials. We are also reviewing various coronial recommendations concerning the supply of drugs to prisoners. That issue was also raised by Hon Giz Watson.

Hon Kate Doust also asked why the cultivation of prohibited plants is included in the sentencing limitations of the bill. The cultivation of cannabis plants, particularly hydroponically, has a number of inherent risks to children. Apart from the exposure to sometimes toxic chemicals and materials, often hydroponic set-ups tap into the power supply in very unsophisticated ways, leaving children at risk of electrocution. Also, electrical tampering and the lighting involved in such cultivation can lead to fires, and even normal cultivation can be risky to children.

Hon Kate Doust also asked about site clean-up and the costs involved. A number of houses remain uninhabitable following the use of clan labs. The Environmental Protection Authority has the power to order a clean-up and the police can recover destruction costs through the courts.

Hon Kate Doust also asked a relevant question about Fitpacks and where they fitted into the equation. Fitpacks, fit sticks, stero-fit and other similar products are provided to the community through the approved needle and syringe programs. All such programs are approved through the health department under the Poisons Act. The Pharmacy Board has approval to operate a needle and syringe program. In doing so, pharmacists have a set of professional practice standards that they have to comply with, which include specific provisions relating to needle and syringe programs. Version 3 of those professional practice standards specifically states that in relation to juveniles, guidelines for the provision of needles and syringes to minors vary between jurisdictions. Apart from meeting legislative requirements, NSP staff are advised to follow harm reduction principles and assess whether refusal or access will result in greater harm to juvenile clients. NSP staff are also encouraged to promote referral of juveniles wherever possible. According to a 2007 health department review of needle and syringe programs, persons under 18 years of age accounted for only 1.8 per cent of people who accessed the available needle and syringe programs in WA. All the persons under 18 who did access the programs did so through the needle and syringe program operated by the Western Australian Substance Users Association. It must be remembered that the purpose of the needle and syringe programs is harm reduction. They are designed not to reduce intravenous drug use but, rather, to minimise the health risks of contracting various diseases. The

government fully supports the work undertaken by the various needle and syringe programs operating in WA. Although the uptake by juveniles is only minimal, it is still a valuable service that needs to continue to be made available so that the health needs of both juvenile and adult intravenous drug users are met. The government will not support any measures to limit the availability of needle and syringe programs to persons under the age of 18.

Hon Giz Watson also asked a number of questions relating to drug usage. Preliminary findings from both the latest ecstasy and related drugs survey and the injecting drug data report show that cannabis and amphetamine use has increased. Those findings were released on Monday of this week. Hon Giz Watson also asked how many clan labs have been detected in 2011 so far. As of today, 20 October, 158 clan laboratories have been detected.

Hon Giz Watson asked whether the provisions of the bill will be retrospective. If a person already has a prior conviction for an offence involving the sale of drugs to a child, endangerment through drug manufacture would be disregarded and would not be considered for the purposes of mandatory imprisonment for subsequent offences. How can offences, when the sale occurs in another state, be prosecuted in WA? Section 12 of the Criminal Code allows for offences to be prosecuted in WA if at least one of the acts, commissions, events, circumstances or states of affairs that make up those elements occurs in WA. If this cannot be satisfied, it may still be an offence in that other state. Victoria, New South Wales, South Australia and Queensland have similar offences in relation to the sale of various types of drug paraphernalia.

Hon Giz Watson also asked about the reverse onus of proof. The bill does not contain a reverse onus of proof. The bill does contain various defences, which in part refer to matters contained in the regulations. In such cases the police would be unlikely to proceed in prosecution when a person has such a defence. Police apply the same prosecution policy as the Director of Public Prosecutions does. We have to be satisfied that there is a prima facie case, reasonable likelihood of a successful conviction and a public interest in proceeding with that prosecution.

They are specific questions that were asked by Hon Kate Doust and Hon Giz Watson, and I thank them for their interest. Hon Kate Doust has several amendments on the supplementary notice paper, and they are pretty much those that were moved in the other place. The government will not support those amendments; I will go through them during the committee stage and explain them a little more fully. Hon Giz Watson has an amendment on the supplementary notice paper, and, yes, we will support that amendment. It is a sensible amendment.

Once again, I thank all members for their support. I thank Hon Donna Faragher for her magnificent contribution; I agreed with every word she said. I also thank Hon Col Holt for his valuable contribution. I move that the bill be read a second time.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1: Short title —

Hon KATE DOUST: I will wait until the minister is ready.

Hon Peter Collier: I am ready; I am listening—I am multitalented!

Hon KATE DOUST: That is interesting, given that the minister is a bloke!

Hon Peter Collier: If I said that, I tell you what, I would be damned, tarred and feathered!

Several members interjected.

Hon KATE DOUST: Yes, it is; women are much more multiskilled than blokes!

Some of the minister's responses in his reply talked about how the government would seek to limit the precursor drugs, and given that we have already had the discussion about the change in the types of drugs and the change in the types of other substances—I say "substances" because they are not always chemically based—that are being used, how will the government limit access to them? Quite often, now, the items that are being used in the manufacture of these drugs are freely available, common or garden-variety household-type products and people are able to change the chemical compositions through a process to achieve the drug they want, so what is the government going to do to limit access? What will the government actually do? Does the government have a list of those items that will be limited, given that we have seen a shift from the traditional types of chemicals being used to more common types of products?

Hon PETER COLLIER: The Misuse of Drugs Act already has a list of the substances in schedule I, which is fairly comprehensive. Because it is a complex area and it is changing and substances are used that are readily

available in the community at large, that list can be added to through regulations, with things such as caustic soda and sulfate of ammonia et cetera.

Hon KATE DOUST: I thank the minister for alerting me to that. I imagine that will be schedule III and schedule IV.

Hon Peter Collier: Yes.

Hon KATE DOUST: In my contribution to the second reading debate, I talked about some of the information I had been given, and the advice was that people were now breaking into batteries to extract the lithium and breaking down fertiliser to get the dry ammonia out, and then converting that into the wet product. These are not chemicals. Can the minister tell me whether lithium is listed here? I do not know the correct name. I use those as examples of how things change. Are these types of items going to be listed in a schedule in some way? Given that they are in common usage, how will the government restrict access to them? I think it will be very difficult.

Hon PETER COLLIER: Of course it is impractical to add to the list incidents in which substances are extracted from batteries. As I said, the whole point of the issue with the adding of substances to the list is that the use of lithium, for example, in large quantities can be added, and information on the sale and purchaser of that product can then be relayed to the police in terms of sale and the purchaser of that product.

Hon KATE DOUST: I do not disagree with what the minister said; I am just curious. As I understand it, the advice I was given was that someone needs to mix only a very small amount of pseudoephedrine—one to two grams—with all the other components to get a reasonable amount of meth. How will the government go about dealing with that?

Hon PETER COLLIER: A lot of those substances, of course, will be readily available through pharmacies et cetera, and they have to log and record the sale of those substances as they currently exist, so that information will be, and is, readily available.

Hon KATE DOUST: I had a different question relating to some comments that the minister made when I talked about the remediation process. The minister has advised us that the Environmental Protection Authority has the capacity to recommend or require that a property be cleaned up, and that costs be recovered. Excluding today, because that is too new—let us take it back to the last 157 examples for this year—in how many of those clandestine laboratories would that have kicked in and the EPA would have sought the site to be remediated according to whatever standard it has and costs to be recovered? In how many cases would that have happened in the past 12 months?

Hon PETER COLLIER: Cost recovery came into effect only through an amendment to the legislation in 2010. I am sorry that I do not have that information but I can give an undertaking to get that for the member.

Hon Kate Doust: Yes, I would be interested in that.

Hon PETER COLLIER: We will do that.

Hon GIZ WATSON: I believe debate on clause 1 is when I can ask a more general question, as I do not believe the minister covered it in his response to the second reading debate. What evidence can the minister provide to indicate that the current sentencing process does not take aggravating circumstances into account? What evidence is there to indicate that the court does not take into account the presence of a child at a clandestine laboratory and impose an appropriate sentence?

Hon PETER COLLIER: At the moment it is not an element of the offence and it is arguable as to what contribution it will make in the determination of the prosecution case. This bill will make it unambiguous; it will provide clarity. At the moment, though, it is not an element of the offence that is being considered.

Hon GIZ WATSON: I understand that, and the Greens (WA) would absolutely support it being an element of the offence. However, given that a number of cases have been heard involving premises at which children were resident or usually resident, what do the statistics indicate about the sentences imposed for those cases, as opposed to the sentences imposed for cases in which no children were present?

Hon Peter Collier: Yes, I understand. I did not mean to cut the member short, but I understand the question. Is there anything else?

Hon GIZ WATSON: Can the minister provide me with that information?

Hon PETER COLLIER: I can give the member some general information and, because we will obviously not finish the committee stage of this bill today, I will give an undertaking to get the information on specific cases involving children. Is the member happy with that?

Hon Giz Watson: Yes.

Hon PETER COLLIER: In 2009 there were 184 charges laid, 141 convictions recorded, 20 per cent imprisonments and 15 charges pending. In 2010 there were 216 charges laid, 150 convictions recorded, 58 imprisonments, or 39 per cent, and 40 charges pending. In 2011 thus far there were 156 charges laid, 30 convictions recorded, three imprisonments, or 10 per cent, and 122 charges pending. Those are not the statistics the member asked for, but that will give her a bit of clarity on the number of offences. When we sit again, I will have the information on cases in which children were specifically involved. Is the member happy with that?

Hon GIZ WATSON: I thank the minister for that. I think those are statistics that I quoted.

Hon Peter Collier: You quoted them, did you?

Hon GIZ WATSON: Yes, about 15 minutes ago in my speech, but that is okay. It probably means that we all agree on those stats.

Hon Peter Collier: I was engrossed. I am sure I would have picked up on that.

Hon GIZ WATSON: The minister was not listening that closely and I am deeply disappointed! The statistics probably have the same source, which is a good thing.

Hon Peter Collier: They are consistent.

Hon GIZ WATSON: Very consistent. If the minister could give me an analysis of how many of those cases involved children, the exact length of the sentences imposed and whether or not they were longer because children were present, that would provide the full picture.

Hon Peter Collier: I have got it already. I will provide it after question time.

Committee interrupted, pursuant to temporary orders.

[Continued on page 8466.]

Sitting suspended from 4.15 to 4.30 pm