

Mr Rob Johnson; Dr Janet Woollard; Ms Margaret Quirk; Dr Tony Buti; Mr Martin Whitely; Mr Bill Johnston;
Mr Mark McGowan; Mr Ben Wyatt; Mr Peter Abetz; Mr Paul Miles; Acting Speaker; Mr Paul Papalia

MISUSE OF DRUGS AMENDMENT BILL 2011

Third Reading

MR R.F. JOHNSON (Hillarys — Minister for Police) [10.24 am]: I move —

That the bill be now read a third time

DR J.M. WOOLLARD (Alfred Cove) [10.24 am]: I want to say how pleased I am to see this bill go through this house. Illicit drug use is a serious problem in the community. As you would know, Mr Acting Speaker (Mr P.B. Watson), because you are a member of the Education and Health Standing Committee, illicit drug use is an issue that the committee looked at in its last inquiry. It is very sad to hear the stories associated with illicit drug use, and particularly how illicit drug use affects children.

As I pointed out during the second reading debate, this bill aims to do three things. The first aim of the bill is to crack down on drug dealers who sell or supply illicit drugs to children. I believe that once a few people have been convicted for selling drugs to children, the message will get out to the community that that is an offence. Hopefully, that will reduce the problem that we have now with people approaching children on their way home and trying to sell them illicit drugs. Children may have had a bad day at school and be tempted to buy those drugs, and there is then a very good chance that they will become dependent on those drugs. Therefore I think this is a great initiative. I am very pleased that the government is trying to stop people in the community from preying on children to try get them to become dependent on drugs; and, as we know, along with that dependency on drugs comes all the problems associated with drug use, such as criminal behaviour. So I congratulate the minister for introducing this legislation, and I hope that we will get some statistics at some point so that the minister will be able to come to this house and say how effective this legislation has been, because I am sure it will be very effective.

The second aim of the bill is to protect children from endangerment by tightening the sentences for exposing children to harm or the danger of serious harm as a result of the manufacture of prohibited drugs and the cultivation of prohibited plants. During the second reading debate I asked the minister about the chemicals that are used in clandestine laboratories. As I mentioned during that debate, research from America has shown that in one state, when pseudoephedrine was taken off the pharmacy shelves, the number of clandestine drug laboratories decreased from 400 to approximately 20 within just a few years. I am very pleased that the minister has assured me that the department and the police are looking into the types of drugs used in clandestine drug labs to determine whether the compounds being used are purchased at pharmacies, with a view to maybe making them available only by way of a script, rather than by general purchase.

The third aim of the bill is to ban the sale of illicit drug-use paraphernalia, such as cocaine snorting kits. This is another area in which anything that can be done to cut back on children—anyone—using illicit drugs is a good initiative. Therefore, I congratulate the government on bringing this bill to the house and I hope that in 12 months and in two years we will have the evidence to show how effective this legislation has been and will be.

MS M.M. QUIRK (Girrawheen) [10.31 am]: Before I talk briefly about the Misuse of Drugs Amendment Bill 2011, I want to make the point for the benefit of the member for Alfred Cove, who was not here last night, that it is very easy to take the moral high ground when a person has had eight hours' sleep. If the member were really committed to this bill, she would, like the rest of us, have been here. It is very unfortunate that the member chose to be elsewhere.

As the member for Alfred Cove stated, this bill contains three elements, two of which were Liberal Party election commitments. The first is the banning of the sale of drugs to children. The sale of drugs to children was effectively already an offence under the offence of the supply of unlawful drugs, albeit not one articulated with specific penalties attached in the case of children. The second is the widening of the ban on the sale of drug paraphernalia. Part of the debate last night that the member for Alfred Cove was not privy to related to some uncertainty and some grey areas about what constitutes drug paraphernalia and the exemptions to the prohibition on selling drug paraphernalia, for example, Fitpacks, needles, as part of a needle-exchange program and devices such as hookahs or shishas used by particular cultural groups to ingest tobacco, which is of course a legal drug. All those things were discussed in the context of being a Liberal Party commitment. The third aim was not a Liberal Party election commitment. However, over the past three years it has become increasingly clear that the clandestine drug lab problem has completely blown out of control under this government. The numbers have, I think, more than tripled. Because of the very nature of the volatility of the substances involved in the production of these drugs, these labs pose a danger to not only those directly on site manufacturing the drugs, but also their neighbours. That is the problem. The issue was very much brought to the fore when the Commissioner of Police's son was in one such lab when it exploded. He ended up in the burns ward at Royal Perth Hospital along with many other people who were involved in the same activity at other clan labs. It is a sad fact that our first-

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rate medical services in the burns unit at Royal Perth Hospital are increasingly being used to look after those who are involved in this dangerous and illicit trade. The police have had a lot of success identifying clan labs and I commend them for it. However, I think we need to know that it is the tip of the iceberg only; that is, if the number of labs discovered today is triple the number discovered three years ago, a lot more are not being discovered, and that is a matter for concern.

Because of the major problem of children being discovered on site at about 30 per cent of these clan labs, for some time Labor has called for government to do something to specifically deter people minded to let kids be around the particularly dangerous activity of manufacturing amphetamines. I say “the dangerous activity of manufacturing amphetamines” in reference to one of the issues the opposition has with the bill.

The minister has, of course, moved with his usual glacial speed and some three years later we finally see some legislation. However, it is not in a form that we think is preferable or effective, or that will act as a specific deterrent. And there definitely will be unintended consequences. That brings me to the second issue we have with this bill; namely, people this bill does not target will be unwittingly caught by it because of the breadth of the laws thanks to the minister’s reasonably—how can I put this kindly—unsophisticated view that all drugs are bad, without necessarily looking at the harm we are trying to reduce with this legislation. The opposition’s view was that if one were caught manufacturing amphetamines and children were found on site, it should be a certain starter pack of aggravation for a sentencing judge to take into account. Unfortunately, this is not the track the government has taken; it has gone down the track whereby not only the manufacture of methamphetamine and clan lab activities are covered, but also the cultivation of an unlawful plant is covered. If this legislation were restricted to the commercial cultivation of plants with a specific number of plants or more, or restricted to circumstances in which plants were cultivated hydroponically and the electricity and lighting set up posed a danger or where, as mentioned by the member for Murray—Wellington, there were booby traps—I understand the hydroponic set-up raided in Geraldton last night was surrounded by booby traps—the opposition would have agreed that it was arguable that the activity of cultivating an unlawful plant in such cases created a nexus between that activity and the prospect or possibility of causing harm to a child, and would have copped it. However, the minister was very uncritical in his approach to this legislation, and we found during debate last night—which I know the member for Alfred Cove will be very sorry she missed—that the growing of a single plant in circumstances that pose no greater threat than the photosynthesis of that plant is an offence. This seems to be a yellow Lamborghini waiting to happen. The problem we have is that the consequences of being found guilty of an offence under this legislation is that it may well attract a mandatory term of imprisonment.

We say that hard cases make bad law. Not giving the sentencer the capacity to distinguish between a case in which someone grows one marijuana plant in a pot in their backyard, and maybe the pot falls over and hurts a child, is a far cry from a case in which someone manufactures amphetamines in dangerous circumstances in a makeshift lab at home and lots of noxious chemicals are released, exposing a child to physical harm and possibly brain damage. Yet the minister seeks to cover this range of behaviour in a way that gives the sentencer very little discretion. We do not think that is good law. We think that law should be about deterring conduct that the community regards with great opprobrium. We believe the law should be about attacking something that has a worrying prevalence, and we want to deter people from committing similar acts in the future.

Last night the minister and his advisers were unable to provide evidence of any cases in which children had come to direct harm during the cultivation of cannabis. As I said, we accept that there may be circumstances in which there can be a nexus but the mischief that this legislation should have squarely been about is manufacturing amphetamines in premises in which kids are present. We have heard examples of police raids being conducted and a child’s cot being used to store chemicals. Everyone in the community regards that as absolutely horrible and it should send a very strong message when it comes to sentencing. I think it should be regarded as being at the higher level of culpability when sentences are imposed. We say that the end does not justify the means. In the future there will be cases with the sorts of examples we raised as being atypical of the conduct that should be controlled by this legislation, which will mean that significant injustice is caused.

It is also very important to note—I think the member for Alfred Cove will be interested in this—that during the debate last night the advisers advised the minister, who told this Parliament, that the vast majority, almost 100 per cent, of those who were caught with clan labs were addicts. The minister was further advised that 90 per cent of them were producing solely for their own use and only 10 per cent were supplying the drugs for other than their own use. That brings up a whole lot of other issues; for example, if a sentencer has discretion in sentencing, they can, for example, make the suspension of a term of imprisonment conditional on the offender completing a drug addiction program.

Dr J.M. Woollard: Would you agree that we need to know where they’re getting those chemicals from?

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Ms M.M. QUIRK: By and large, we know that. In terms of precursors, some very good laws were introduced by the former Labor government. In terms of licit drugs that are purchased from pharmacies, Project Stop has been very effective in deterring pharmacist shopping and the banking of large quantities of pseudoephedrine needed for drug production. However, Western Australia is a large state. It is very easy to import the stuff from interstate in a way that does not attract attention. I do not think a lot more can be done about that at this stage. It is important to know that this component of addiction is very important in the sentencing process because we need to break the cycle. Everyone in this room would know that the program availability in Western Australian prisons is not as universal as it should be. If someone goes to prison, there is no guarantee that they will be able to get on the drug addiction program that they so sorely need to get on.

We are in a situation in which addicts with children may well be sentenced to prison under these laws. We are not quite sure what will happen to the children. Addicts will come out of prison without having gone through the necessary program. We are using a sledgehammer to crack a nut. I am not saying that this issue is not incredibly serious. The community and the opposition have expressed the view that this is heinous behaviour and should be treated as such. The approach that the minister has taken is pretty unsophisticated. It has dragged in a whole lot of peripheral offending, which should not be what this legislation is about.

To conclude, we moved amendments to the bill, which were unsuccessful, that would have ameliorated our concerns. We welcome the fact that the minister agreed to review the legislation after three years. Time will tell whether our concerns are borne out. We are certainly hopeful that, however inelegant these laws are, they will act as a deterrent for people conducting activities in clandestine labs in the presence of children. It is unacceptable and abhorrent and should not occur. We are hopeful but we are not optimistic.

DR A.D. BUTI (Armada) [10.46 am]: In the Minister for Police's second reading speech introducing the Misuse of Drugs Amendment Bill 2011, he stated —

During the 2008 election campaign, the Liberal Party released a policy document titled “Tackling Illicit Drugs in our Community: Law Enforcement”. The document outlined four law enforcement initiatives to tackle illicit drugs in WA. The first of the initiatives has been addressed by the Cannabis Law Reform Act 2010, which came into effect on 1 August 2011.

The three remaining initiatives to be addressed by the Misuse of Drugs Amendment Bill 2011 will crack down on drug dealers who sell or supply illicit drugs to children; protect children from endangerment by tightening sentencing for exposing children to harm or the danger of serious harm as a result of the manufacturing of prohibited drugs and the cultivation of prohibited plants; and ban the sale of all illicit drug use paraphernalia in Western Australia, such as cocaine-snorting kits.

I have no idea what they are. I do not think anyone would disagree that the minister has the right to bring in legislation to tackle those issues. No-one from our side of the house would argue against the fact that we need to do what we can to reduce the use of illicit drugs, by children in particular. I gather that much of the minister's motivation stems from the recent increase in clandestine labs, for which we do not have the statistics but, as the minister said last night, there is a possibility that children are being housed in these homes that contain clandestine labs. That is a very serious issue that needs to be addressed by legislation, but not just by legislation itself. It would have been better if the minister and the government had come to this chamber with a more tightly structured and better drafted bill that tackles clandestine labs and the endangerment of children. Our concern, which was expressed last night, is the breadth of clause 9 of the bill. There is a problem with the breadth of that clause. That problem is magnified by the mandatory sentencing provisions that are attached to offences under that clause. As a lawyer, I have a problem with mandatory sentencing. There is a long-held view in the common law system that was developed in England that the judiciary should have discretion because they are at the coalface in the sense that they obtain all the evidence in cases before them.

It is easy enough for the legislature to pass laws and to say if X happens, Y will be the consequence. But often something happens between X and Y, and unless we know the full circumstances behind X, we may actually cause an injustice. Reading this bill, and particularly clause 9, brings me to a quote from the United States musician Frank Zappa, who stated —

The United States is a nation of laws: badly written and randomly enforced.

I am not so sure about the randomly enforced aspect, but I think we could change that quote to say that under the Barnett Liberal–National government, Western Australia is a state of laws that are very badly written. This bill, particularly clause 9, is badly written. The breadth of it is amazing, and our numerous questions to the minister last night about the breadth of it and the causal link between the cultivation of a prohibited plant and endangering the life, health or safety of a child under 16 years were never properly addressed or answered. I am in complete agreement with the minister that the use of drugs in our society is a major problem, particularly when children

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are at stake, but when a problem is identified, a sledgehammer should not be used to correct that problem. When a sledgehammer is used to try to correct the problem, a greater problem may actually be caused and we may not know of the collateral damage that may be caused by the use of that sledgehammer. When we are in this place trying to enforce or draft and pass laws, we should do what is necessary to address the particular problem that the law has been enacted to address. We should be addressing just that problem, not trying to remove that problem from existence. I am sure that the minister would agree that no piece of legislation, unfortunately, will ever get rid of drugs in WA, but I know that he is trying to reduce the illicit use of drugs. However, the use of a sledgehammer approach may actually cause greater problems. I do not say that people who commit drug offences should never be in prison, but, as has been mentioned by other people, prisons are unfortunately a haven for drugs. The breadth of this bill means that there may be people who end up in jail who should not be in jail. One has to be concerned about what happens once those people enter jail. Last night, the member for Balcatta mentioned that, in addition to this legislation, the government needs to be thinking about non-legislative means to address the drug problem in WA, and I think that goes without saying. The member for Warnbro has of course talked many a time about the justice reinvestment strategy. I think that if we coupled tightly structured legislation with a policy and non-legislative development that highlighted the justice reinvestment approach that has been articulated by the member for Warnbro, we would have a greater chance as a Parliament to minimise the use of illicit drugs, and particularly the problem that this legislation seeks to address, which is the endangering of children and the selling of drugs to children. Although I applaud the minister's motivation in trying to tackle the problem of illicit drugs and children, I do not applaud him for the bill before us, because it has a far greater breadth than is necessary. It is a sledgehammer approach and we are unaware of the collateral damage that may be caused to people who are innocent. Yes, minister, bring in laws that seek to reduce drug use in Western Australia, but bring in appropriate, tightly structured laws that particularly address that problem, coupled with a proper policy formation that does not have to be legislative.

MR M.P. WHITELEY (Bassendean) [10.55 am]: I will make a very brief contribution, and I will not go back over the issue of the title of the Misuse of Drugs Amendment Bill and how I think that this bill does not deal with the huge problem of the abuse of licit drugs. However, I want to make a few brief comments. I did not participate in last night's debate, but I listened to the debate about equating the harm that can be caused to children through clandestine drug labs with the potential effects of the growing of cannabis plants in the backyard, and I was incredibly concerned to hear the minister's response. I think it is an issue that needs to be revisited in the other place, because clearly, the imposition of mandatory sentences along the lines of what was described by the minister last night for the growing of a single cannabis plant, and the equating of the potential effects of the growth of cannabis plants with the harm that could obviously occur to children through clandestine drug labs, is just emblematic of the problems that the minister brings to the approach of dealing with drug abuse. Unfortunately, the minister brings a bumper sticker-type approach to the problem. It is all about slogans; it is all about portraying the image that Labor is soft on drugs. For all the reasons that I outlined in my contribution to the second reading debate, and I will not go over them again, we need to bring some intellect to bear on the issue of drug abuse. It is a very complex issue and the things we do in trying to stamp out the abuse of drugs such as cannabis, for instance, may have unintended consequences that are in fact far more harmful. I want to make the point that every time we tighten the legal consequences of using drugs such as cannabis, there is a natural incentive created for people to abuse other drugs that are legally safer in the sense that users can identify —

The ACTING SPEAKER (Mr P.B. Watson): Member, this is the third reading debate of the bill, therefore you have to —

Mr M.P. WHITELEY: These are issues that were raised in the second reading debate.

The ACTING SPEAKER: Yes, I know, but we have to get on to the actual bill.

Mr M.P. WHITELEY: Yes, and I am getting on to the bill.

One of the unintended consequences of this legislation in introducing things such as mandatory sentencing for the cultivation of cannabis plants may be that people will avoid the use of cannabis and will use other drugs that are legally safer in the sense that a person may be able to make a plausible excuse to police about why they are carrying prescription amphetamines or prescription sleeping tablets or opioids. The subtleties of that impact are lost in the bumper-sticker approach; this slogan-driven approach that the minister brings to this debate. There are good elements to this bill. We need to be concerned about the growing problems of clandestine drug labs, amphetamine labs, and the dangers they pose to children. That intention at the heart of the bill is excellent, but when we lose focus on the bigger picture by having a disproportionate response through a mandatory approach to sentencing that reduces the capacity of the judiciary to consider the individual circumstances of a particular situation, we are immediately saying that this Parliament and this minister—right here, right now—are better able than the judiciary to judge the circumstances confronting a magistrate in an individual case, when the magistrate is in full knowledge of those circumstances and the minister and the Parliament are in complete

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ignorance of those circumstances. I want to use this opportunity to encourage the Parliament to address the issues of the misuse of drugs in a broader context. I do not think enough intellect has been brought to bear on this problem. It is a complex situation and, clearly, some elements of this legislation have the potential for unintended consequences that could in fact make the problems of licit drug abuse worse elsewhere. Pushing down on the cultivation of cannabis and increasing criminal penalties may encourage people to go to legally safer drugs, but they may be more dangerous alternatives in terms of health and addiction and abuse.

MR W.J. JOHNSTON (Cannington) [11.00 am]: I do not intend to speak terribly long in my contribution to this third reading debate on the Misuse of Drugs Amendment Bill 2011, but I want to make a couple of points. The first point regards the proposed amendments to section 34 contained in clause 9 of the bill. Proposed section 34(4) reads —

(b) an offence under section 7(1)(a) that involved cultivating a prohibited plant.

...

committed in circumstances where the acts constituting the offence endangered the life, health or safety of a child under 16 years of age ...

The point I want to make here is that we asked the minister some questions about that during consideration in detail and the minister said that the cultivation of the plant leads to the endangerment, based on the fact that a child aged under 16 years might smoke the plant after it is harvested. That is a very different issue to the issue of a clandestine drug lab, which might explode and kill people or burn the neighbours or cause destruction. I do not understand why the minister thinks that the cultivation of the plant is the cause of the endangerment. Cultivating the plant is clearly illegal; we all know that. This is not about the cultivation of illegal drugs being okay; it is about the inclusion of that offence with what I think my constituents see as a much more severe offence—that is, running clan labs in the suburbs. I am not like the member for Victoria Park; I have not had the large number of clan labs going off in my electorate that he has been suffering, but it is an issue for people in my electorate. People have come into my office to talk about these issues. The problem I have with the provision is that rather than making it clear that Parliament has a problem, we are denigrating the issue. We are saying that growing two plants in a backyard is just as dangerous as running a clan lab in an apartment block. Clearly, that is not right. That is one of the mistakes made by the minister.

Another thing that happens in these debates is that, as the member for Bassendean quite rightly said, we get a bumper-sticker attitude. Last night, there were calls across the chamber such as “You’re soft on drugs” and that sort of thing. I will not labour the point, but members on this side of the chamber have a deep and demonstrated commitment to fighting drug abuse. I am not going to make cheap points, such as “In the latest surveys, drug use in Western Australia has increased since the Labor Party lost power”, because that is the sort of cheap politicking that we see from the other side of the house. However, I will say that the member for Girrawheen was a crime fighter in her previous life. She was the Senior Counsel for the National Crime Authority, which at that time was the senior government instrument to fight organised crime in Australia. She has a demonstrated commitment to tracking down and fighting organised crime and drug trafficking. Quite frankly, the Minister for Police’s greatest contribution to fighting the illicit drug trade in Western Australia will be when he retires from his portfolio. That is the situation. Let us not have ridiculous commentary from the other side of the chamber that denigrates the deep commitment to fighting crime that the Labor Party and individual members of Parliament have shown over a long time.

MR M. MCGOWAN (Rockingham) [11.04 am]: I also want to speak briefly on the Misuse of Drugs Amendment Bill 2011. I have not contributed to this debate thus far, but I want to say a few things about this legislation. I care about whether people abuse drugs, but it is something quite outside my personal experience. I heard the member for Cannington talk about people’s past involvement with fighting crime and he mentioned the member for Girrawheen. When I was a naval officer, considerable effort was made to ensure that military personnel did not have any involvement with the use or distribution of drugs. I suppose that was the extent of my personal experience with these issues. As a member of Parliament, of course, we see and hear of cases in which people are involved with drugs in our own communities, but I must say that I do not see much of it. Although we hear about it, in the lives we lead we do not see a great deal of it in our communities. Drug use is not particularly obvious unless we really look for it or move in a social circle in which it is prevalent.

I have a few views on this bill. My first point relates to the mandatory sentencing aspects of the legislation. I have some difficulties philosophically with mandatory sentencing, because it removes the discretion of a judge who hears all the facts and circumstances of the case to decide the most appropriate penalty for the individual who has allegedly committed the offence. When we remove that discretion, we express a lack of confidence in the judiciary and say that we do not have confidence in the judiciary’s ability to decide the right course of action.

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We are also, potentially, making the court make a decision that might not be in the best interests of everybody involved and of the entire community. Therefore, before we implement something with some sort of mandatory sentencing component, we need firm evidence that what we are trying to address is not already being appropriately addressed by the courts.

Is there evidence that the massive increase in the number of these drug laboratories in our community is caused by the sentencing decisions of judges? Are people setting up these laboratories in their houses and garages because of the behaviour of the courts? I do not know whether that evidence is there. After reading the second reading speech and listening to the debate, I do not think there is evidence that people are undertaking that behaviour and setting up those laboratories because of the decisions of the courts. The only case that I can recall in recent days of someone being sentenced in relation to one of these unlawful drug labs is the well-known case of the Commissioner of Police's son and, as I recall, he went to jail for an extended time. Where is the evidence that the courts are failing? If there is no evidence that the courts are failing or are making mistakes, why do we go down the course of action of telling the courts what they have to do? We are telling all those eminent judges in our community—I have a lot of respect for judges—that they are doing something wrong.

The second point I want to make is about these clauses relating to children being put in danger. The bill provides that if children were put in danger, the people who set up the drug laboratories must go to jail for six months. I want to comment on that particular point. The perpetrators must go to jail for six months if children were placed in any danger. Of course, we are all appalled if kids are placed in danger as a consequence of irresponsible people manufacturing drugs. Judges are appalled. Anyone who finds out about a circumstance of that nature is appalled by it.

However, I want to just tell members about a little visit I made recently to an office of the Department for Child Protection. I sat with a group of social workers who deal with kids all the time from that strata of society where life is hard. The kids have a lot of problems in their lives; their parents have problems. There are all sorts of substance and alcohol abuse and domestic violence issues. It was only last week that I visited. Every one of the child protection workers I spoke to, to a person, said that in except the most extreme of cases, the parents were better at taking care of the children than they were. That is what they said to me.

Domestic violence and those sorts of issues might be involved. They said that as soon as kids are taken away from their parents and placed in a family that they are not familiar with, they inevitably will get moved between other families. The child protection workers said to me that, except in incredibly extreme cases, the kids are better off being left with their parents, because the kids want to go back to their parents. In most cases they cause trouble in the family they are allocated to, and then they get moved to another family and the problem is made worse. Therefore, unless it is absolutely necessary, kids should not be taken away from their parents. This was a group of child protection workers telling me this; they know the situation. Under these laws, if mum and dad, on a second occasion, are cooking some drugs for their own use and are caught, they both go to jail. The kids then go somewhere where they may well be worse off. The child protection workers I was talking to were saying that the kids will be worse off in virtually every case. There are obviously some examples where they will not.

Mr P. Abetz: The latest evidence from the UK shows otherwise where drugs are involved.

Mr M. McGOWAN: I am sorry; is the member a child protection worker? Thank you. I know the member has some expertise in a whole range of areas, but I know now that he is not a child protection worker. All I am saying to the house is: why do we not leave it to the court? The court hears all the evidence and can actually decide in the interests of everyone involved, in particular the kids who might be removed from their family, whether or not it is better that the kids have that happen. Why do we not just leave it to the court, rather than us—not knowing the circumstances of the family and not knowing the circumstances of the case in which mum and dad will both go to jail—deciding the matter for the court? The court will actually have the people before them and can decide what is in everyone's best interests. Otherwise, we are making a judgement that may well condemn children to a worse outcome than the one they were already in.

I am not saying that in some circumstances the parents should not go to jail—I am not saying that at all. I am saying that we should let the people who hear the case decide whether it is in the interests of those kids that jail is a better outcome for their parents, and that separation from their parents is a better outcome than some other outcome that the court has, as a whole range of sentencing discretions that the court has available to it. I do not think that is soft on drugs; I just think that it is reasonable and in the interests of children.

Dr A.D. Buti: In regards to the judiciary, a study was done in Melbourne and Tasmania where they asked the jury after hearing the trial what sentence they would impose. All of them said they would have imposed a lighter sentence than what the judge proposed. This whole idea that judges are soft in sentencing is completely debunked.

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Mr W.J. Johnston: That was reported by the Australian Institute of Criminology. I actually wrote to the author and asked further questions about this. It is a very interesting study.

Mr M. McGOWAN: It is an interesting study. I think it bears out the point I am making, but I reiterate that I am not saying that the parents should not go to jail. I am just saying that sometimes the situation might be made worse for the kids we are trying to protect if we do not let the judge make that decision based upon the circumstances involved. That was certainly the evidence provided to me by a bunch of child protection workers who deal with this every day, one of whom, amazingly enough, was a former merchant banker who decided to go back and do something, as he put it, decent with his life. He just said, “We’re bad parents.”

MR B.S. WYATT (Victoria Park) [11.15 am]: I want to make a short contribution to this third reading debate on the Misuse of Drugs Amendment Bill 2011. I want to emphasise the points that were just made by the member for Rockingham and the member for Bassendean. Most Labor members of Parliament have a philosophical objection to mandatory sentencing, and certainly, as a lawyer, I do. The points made by the member for Rockingham were very pertinent. Ultimately, when a case gets to court, we have a system that is able to consider the individual facts of a case. The Parliament can only ever be a sledgehammer, providing a broader legal context in which our society and our justice system will operate. As any person who goes through first year law school in legal process is told that laws made by the Parliament are the skeleton. The rest of the body is made up by regulations, common law, court opinion and court judgement. The comments just made by the member for Rockingham are bang on.

Mr W.J. Johnston: Is that a technical term?

Mr B.S. WYATT: They are absolutely correct. Why, with all we know about child protection and all we know about prioritising children, would we here deem to assume that laws passed by this place can deal with each individual circumstance faced in our community? It is arrogant to assume that we can do so. One example that is taking place in my electorate has recognised those practices as wrong. A huge success story now is taking place trying to reverse that within the current criminal justice system. That is taking place at the Boronia Pre-release Centre.

Ms M.M. Quirk: A wonderful Labor achievement.

Mr B.S. WYATT: It is a wonderful Labor achievement that the Premier was desperate to close. I remember that he and his former friend and former shadow Attorney General, the former member for Nedlands, Ms Sue Walker, were at the gates saying how terrible this institution will be for the community in Victoria Park. There will be criminals running rampant through the senior centre next door. It was going to be awful. What have we seen since? Boronia has been a great example of how to go about reducing recidivism. What are they doing at Boronia with those women? They are bringing their families into them to enable those women to be mums to the children that they have had to leave behind when they have gone to jail to enable those women to forge relationships with their children that they have not been able to do in the normal prison process. That is why Boronia has been successful. That is why people from the criminal justice system and corrective services in other parts of the world are coming out and having a look at what happens at Boronia. The recidivism rate for women who have gone through Boronia is hugely less than those in the criminal justice system who go through mainstream prisons.

Mr P. Abetz: How does that relate to the bill?

Mr B.S. WYATT: The member for Southern River has not been listening. I know the member has a strong faith, but he actually has to look at what is going on with this legislation. I do not view it as particularly Christian to have the view that we here can look at every single family circumstance and come to an opinion while we are sitting in the luxurious confines of the parliamentary chamber; I do not. As the member for Rockingham has pointed out, the member for Southern River is clearly a self-appointed expert in child protection now. That is interesting. I will get onto the website of Parliament and have a look at the member’s background to see what the member’s views are and his experience in making those assertions.

When we are talking about the removal of children from their families, considering what we know happens and considering our own experience in Western Australia, to assume that our legislation can deal with all of those circumstances is absolutely absurd, and I think we all know that. The member for Rockingham and many members have made the point. Clearly, the conservative side of politics, the Liberal–National government, has a deep suspicion of and hostility towards the judiciary. When they put in mandatory sentencing, members opposite say: we do not trust the judges. It is interesting that the member for Armadale referred to research that suggests that members of a jury would demand a lesser sentence than is the case with judges. I do not hear the Minister for Police accusing jury members of being soft on crime. Ultimately, the member for Bassendean is right in asking: is it beyond us as a Parliament to have these discussions on crime with the intellectual capacity that the community deserves? Maybe it is. Maybe there will always be one dimwit who wants to reduce it to a simple

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line with the bumper sticker line referred to by the member for Bassendean—“Tough on Crime”. As soon as that happens, we all tend to rush to the bottom of debate, as we see being played out in the federal Parliament at the moment. As soon as one MP is willing to go down that path of debate, we all tend to do so.

I have not lost faith in the judiciary. I think our Chief Justice, Wayne Martin, is a great example of why these debates need to take place at a more sophisticated level than occurs in this place. The member for Southern River may want to arrange a meeting with the Chief Justice and have a conversation with him about some of the member’s comments on this bill, and certainly those in his exchanges across the chamber.

As I began my short contribution, again I highlight my suspicions about and hostility towards mandatory sentencing, because Parliament can never truly understand the individual circumstances of every single case in the courts. To assume that we can do so and deal with the unique factors of those individual cases here in legislation is arrogant and absurd. This is another example of legislation that seems to be there to force the by-line of “Tough on Crime” rather than to reduce crime, the number of victims of crime and the impact of crime on the broader community. With that approach, this is the sort of legislation that we will continue to debate.

MR P. ABETZ (Southern River) [11.21 am]: I want to make a very brief contribution to the Misuse of Drugs Amendment Bill 2011. I fully support the Misuse of Drugs Amendment Bill. One thing raised about cannabis plants has been: what is the danger of growing a cannabis plant? Please, members, use a bit of intelligence. If a person grows a cannabis plant, they do not grow it as a pot plant to admire; they grow it to smoke it. When we realise the damage that cannabis smoke causes to people’s mental health, we will realise that if children are present in a home where cannabis is smoked, the passive smoking damage to children’s mental development is very serious.

Several members interjected.

Mr P. ABETZ: That is a very serious issue. We have passed legislation in this Parliament to protect children.

Several members interjected.

The ACTING SPEAKER: This is the first one for the day, member for Armadale.

Mr P. ABETZ: In this very Parliament we have passed legislation to ban smoking in cars when children are present. Why? It is because of the danger of the smoking.

Several members interjected.

Mr P. ABETZ: Mr Acting Speaker, I seek your protection.

The ACTING SPEAKER: Member for Rockingham, I call you for the first time today also. I will ask members on my left to show the member for Southern River the same respect that other members showed when the opposition member spoke, when there was pretty much silence.

Mr P. ABETZ: No attempt should be made to suggest that children passively ingesting smoke from cannabis is not a serious health issue; it is a criminal thing to do to children as far as I am concerned.

Several members interjected.

Point of Order

Mr P.T. MILES: You just made a ruling about the interjections from the opposite side of the chamber.

Several members interjected.

The ACTING SPEAKER (Mr J.M. Francis): That will do! I want to hear the member for Wanneroo in silence.

Mr P.T. MILES: You made a ruling a short time ago, Mr Acting Speaker. We listened quite respectfully to those speeches from members opposite all morning. One of our members gets up and puts his point of view, and all of a sudden we get this barrage of thuggery and abuse across the chamber. I ask you to call them to order.

Several members interjected.

The ACTING SPEAKER: Thank you, members! I thought I made myself perfectly clear. I will stand here for however long it takes to call you people to order. I just want to hear the member for Southern River.

Debate Resumed

Mr P. ABETZ: The other point I want to briefly raise is that, having worked with drug addicts, I perhaps have more experience than many in this house in helping people overcome their drug addictions. Undoubtedly, sometimes their first encounter with the law is a wake-up call for people to seek rehabilitation and so on. I note that, according to the bill, for a second or subsequent offence, the court is required to impose a term of

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imprisonment, and, for a first offence, a suspended sentence is an option to a judge. The clear message that sends to the community and to those who dabble in drugs is that this is a serious offence. If there is a particular family circumstance or whatever that the judge takes into consideration, and believes that imprisonment would not be in the best interests of the person concerned, the judge has the option of imposing a suspended sentence. Those issues that were raised as negative things about this bill simply do not stand up to scrutiny.

MR P. PAPALIA (Warnbro) [11.26 am]: I was not going to contribute to this part of the debate on the Misuse of Drugs Amendment Bill 2011, but I feel the urge now—particularly following the previous speaker. The problem with mandatory sentencing has been outlined by a number of speakers on this side of the house. It assumes and presumes that we sitting here today have more knowledge of every single case of this nature that will come before the courts from here on into eternity than a judge who sits and listens to all the circumstances of any case; that judge is deemed to know less about it, to be less capable of determining an appropriate sentence, than we are today. It is an outrageous assumption, and it tends to be one that is championed by incompetent governments. Individuals within an incompetent government, particularly those who are inept and incapable of putting a good argument for their case, defer and default to the bumper sticker level of debate. They fall back on the easiest option. The easiest option when dealing with a very difficult and challenging subject such as drug use and how to do something about it is to claim that they are tougher than everybody else and that their option will be harder and tougher than anything else that might be suggested. That completely ignores the real question. The real question that should be posed when drafting any legislation to attempt to try to divert people from a behaviour we do not want them to engage in is: is what is proposed likely to work? Another serious question that needs to be asked is: what damage might be done in imposing this solution? The first question to be asked—is what is being proposed likely to work?—is not being asked by the minister. He does not look beyond the day he announces that he has introduced mandatory sentencing for people growing a marijuana plant in the backyard. The minister is not looking beyond that outcome. Someone goes to prison, they are removed from their child and the child is then left without a parent. What will that child do? What will their outcome be? What will be the outcome for the individual who goes to prison? They clearly have a problem with drugs, because, as the member for Southern River indicated, they have already failed to take heed of the first warning—this legislation gives judges the option of warning them once. They have failed to do that, so they obviously have a problem. They are incapable of exercising the self-control and discipline necessary to change their behaviour.

What are we assuming by throwing them into prison? We are assuming that they will be deterred from wrongdoing by the pain of going to prison. That may be the case; the Attorney General claims it is, and he presents all manner of interesting statistics in the form of very uninteresting graphs during question time to try to support his side of the argument, but I have read a lot of research and information on this subject and I would suggest that the comprehensive and definitive evidence from around the world is that deterrence, in these cases, is not very effective. An individual who is drug addicted and engaging in criminal behaviour as a result of their addiction is unlikely to stop and think, “I’d better not do this because when I’m caught, rather than get a warning from the judge, I will get a mandatory sentence from the judge, and I’ll go to jail, and that will be bad, so I don’t want to do what I’m doing.”

If they were capable of pursuing that logical path, might they not have already undertaken a little thought before they engaged in criminal activity? Do members not think that if those people were capable of stopping themselves because they were afraid of going to prison, as opposed to some other sentence, they might have already made that decision? Is it not clear that they are incapable of pursuing the logical thought necessary to apprehend that they might get caught? They all assume they are not going to get caught; otherwise they would not do it. Secondly, if those people had the capacity to follow that path and weigh up the likelihood of getting a sentence that will not result in incarceration, do members not think they would already have engaged that logic and changed their behaviour? If they had the self-discipline, mental capacity and cognitive skills to pursue the logic required for them to fear the punishment and therefore change their behaviour, do members not think they would have already changed their behaviour? Is it not illogical to assume that if we make the punishment tougher and remove judges’ ability to exercise discretion, individuals who are so addicted that they are going to pursue this stupid path anyway, to the point of getting caught and being sent to prison, are going to somehow see the light? Are they going to see the light because the Liberal Party of Western Australia has decided that there is going to be mandatory sentencing in this particular case? It is ridiculous.

The first question that needs to be asked is: will it be effective? We can see whether it will be effective, but not from some claim by the Attorney General that crime has been solved over the past three years as a result of his campaign. That is not the proof. The measure of whether legislation for this type of offence is effective is how many times those people reoffend. If the government wants to determine whether it is taking the path towards a positive outcome for the people of Western Australia and making a positive impact on society, it needs to look at whether it is reducing the reoffending rate of the small group of people in Western Australia who commit crimes.

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The government knows as well as I do that the recidivism rate has not changed. The reoffending rate remains unchanged, regardless of the fact that Christian Porter is the caped crusader and —

The ACTING SPEAKER (Mr J.M. Francis): Member for Warnbro!

Mr P. PAPALIA: I withdraw; I beg your pardon.

The Attorney General is the caped crusader, who has proven himself to be tougher than anyone else in history, according to him—even though he is only a lawyer and has never done anything except study law, work in the law, and sit in this place. But apart from that, he is tough!

The government claims that its motivation is to change the behaviour of these drug-addicted individuals. If the government is telling the truth and being honest with itself, it will not assess its effectiveness through a bunch of crime statistics and the prison population rate. It will assess its effectiveness through the rate of reoffending of the people who commit those crimes. The government knows that in Western Australia, 40 per cent of the adult prison population reoffends within two years of being sent to prison in the first place. The government also knows that the recidivism rate for Aboriginal people is 70 per cent. That suggests that, on average, about half of all cases are back in prison within two years. The concept that the deterrence of the prison environment is working to reduce the impact of crime on society is not borne out by the results or by any logical assessment of what the government should be looking at.

Dr M.D. Nahan: What about the victims?

Mr P. PAPALIA: That is exactly what I am talking about—the victims of crime. Because these people keep reoffending, there are more victims of crime. If we could reduce the reoffending rate, we would reduce the number of victims of crime in society.

Mr P. Abetz: Will you take an interjection?

Mr P. PAPALIA: No, I do not want to take an interjection, because I want to be listened to in silence and with the respect that was demanded of this side of the house when the member was speaking.

The ACTING SPEAKER: Thank you, members. I am going to ask for the same respect back.

Mr P. PAPALIA: Thank you for your protection, Mr Acting Speaker.

The point is that the government is measuring the wrong things. Members opposite, who profess to care about these matters, also know that the only thing the Minister for Police measures is his ability to get on TV or be reported in the newspapers on his latest efforts—anything to distract the media from his incompetence and his latest failures. That is how he measures his outcomes.

Mr F.A. Alban: So what's your great achievement?

Mr P. PAPALIA: I do beg your pardon, Mr Acting Speaker. I would appreciate your protection, because I understand that you asked the other side to remain silent and listen with respect to the member for Southern River; I would appreciate being given the same respect.

The point of my contribution is that this minister is a failure in the eyes of everyone in Western Australia, with the exception of the Premier. In fact, if the Premier were honest with us, he would concede that the Minister for Police is a failure in his eyes also, but he does not want to be seen to be responding to the demands of the opposition. As a consequence, the Premier will get rid of the Minister for Police in a short while, not right now—not while the heat is on about his latest failure. The problem with that, of course, is that there is a constant stream of failures. It is a never-ending story of failures in the case of this minister. Of course, it will be very challenging for the Premier to pick a time to get rid of him; it is not just a matter of waiting until Christmas, because who knows what he is going to do over Christmas?

Point of Order

Mr P. ABETZ: Mr Acting Speaker, what has this got to do with the bill?

The ACTING SPEAKER (Mr J.M. Francis): Member for Southern River, that is not a point of order. I will be the judge of how far he can go.

Debate Resumed

Mr P. PAPALIA: I concede, member for Southern River; I was probably straying a little! It is relevant in so much as it is the Minister for Police who has introduced this bill, and he is not motivated by trying to make things better for Western Australians or by trying to reduce the number of victims of crime; he is motivated by trying to divert the attention of the people of Western Australia from his abject failure as a minister. That was the connection I was trying to make, albeit a tenuous one!

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Before these extreme measures of imposing mandatory sentencing and restricting the ability of the judiciary to exercise discretion are introduced into Western Australian law, they should be measured by their likelihood of reducing reoffending rates. That measure is the best measure that we can use. If we want to be really accurate and really scientific about this, we should look at the likelihood that mandatory sentencing and reducing the discretion of the judiciary will reduce reoffending rates for this type of crime by these types of individuals. These are individuals who are so addicted and so constrained by their addiction that they will engage in behaviour that is dangerous and that will possibly inflict injury, or even death, on their own children. Individuals who are behaving in that fashion are unlikely in my view to respond to the deterrence stick. Even if these individuals are likely to respond to that, once they get into the prison system, what is the likelihood that their behaviour will be changed by that experience? If we set aside the deterrence factor, what is the likelihood that they will receive treatment for their addiction inside the prison system?

Mr A.J. Waddell: Zero!

Mr P. PAPALIA: It is not zero. I admire the scepticism of the member for Forrestfield, but the prisons are not that bad. There is a small likelihood that they will receive treatment, depending on the nature of their addiction and the extent of their need. But the fact is that fewer than 50 per cent of the individuals who require treatment for their addiction get that treatment. So, if deterrence is not going to work in changing their behaviour, they are also not going to get any change in their behaviour from any intervention that they might get when they are in prison.

What will happen to these people once they are in prison? We know that what will happen to them for sure is that they will encounter other criminals. In all likelihood they will encounter drug suppliers and drug pushers, who, like them—like the addicted individual who has gone into prison—will shortly be returning to society. The fact is that despite the outrageous claims by the Minister for Police, the vast majority of offenders who enter the prison system in Western Australia will, because of the nature of the crimes they commit and the terms of imprisonment they receive as a result, enter prison for a short period and then return to society. These individuals, having made those connections with the serious criminals who are in the prison system and the drug pushers who are in the prison system, and having networked and received instruction in how to become more criminal in their behaviour, are then returning to society at this incredible rate that we have identified. What then happens is that within two years, they are returning to the prison system at this incredible rate that we have also identified.

So we are measuring the wrong thing, minister. The minister is justifying his actions purely on the basis of being able to come out with a bumper sticker policy that might divert people's attention from his latest failure. It is sad to see that so many individuals on the other side of the house fail to even analyse the actions of the minister when he proposes these sorts of laws. It is sad to see them just accept the minister's statements at that superficial level with just that veneer of analysis.

I want to place on the record that I believe the judiciary is best placed to determine punishments, and it should be given the discretion to do so. That is particularly important when we are talking about addicted individuals who are pursuing this path and endangering children. I would suggest that in the vast majority of cases, these people will be the parents or carers of the children involved; although the children involved may also be somebody else's children. It has been pointed out by the member for Rockingham, quite rightly, that with the exception of the most extreme cases, those parents, flawed as they are, damaged as they are and engaged in as sad a path as they are, are still the best people in the eyes of the professionals—the child protection workers—to look after these children.

I will finish with this. It is a little unrelated, but it will get there. It is about an interesting discussion that I heard on Radio National about how a criminal case in the United Kingdom had been solved through the use of the DNA database in the UK. There are so many people on that database that it is massive. They were trying to isolate a murder suspect. They had no real clues. But in trying to work out how to identify this vicious murderer, they had to try to reduce the tens of thousands of DNA samples on that database to a number that they could work with. What really struck me is that the investigator said that one of the first steps that they took was to look at the DNA of those people on the database who had been in the prison system. That is because, sadly, the key indicator of whether a person is likely to engage in criminal behaviour is if the person has already served a sentence of imprisonment. So, the first thing they did was look at the DNA of the people who had been in prison.

Mr J.E. McGrath: Quite a logical conclusion!

Mr P. PAPALIA: Yes. When they reduced it and went further down that path, they found that their prime suspect was already dead. He had been in prison. So, what did they do then? They then looked at the DNA samples of people whose father had been in prison. That was the way they isolated it further. They looked at the individuals whose father had been in prison, because that is a prime indicator of the likelihood that those persons

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will engage in a path of crime in the future. They eventually found the murderer. It was a person who had never been in the prison system and had never been caught for a crime to that date. But his father had been in the prison system. It struck me as worthy of note that one of the tools that they used in trying to isolate from a large group of people a person who might have engaged in a crime but had not yet been caught for that crime was to look at those persons whose father had been in prison.

What we are proposing in this legislation is to take away from a judge the discretion to determine whether a parent of a child—a father or a mother—or a carer will be sent to prison and have to leave their child without anyone to look after them. We need to consider the consequences for those children and whether that will have a positive effect. I do not expect the Minister for Police to do that, because it is beyond his ken to even think beyond the next five minutes, let alone to think about what might happen to a child's future development as a consequence of their parent being sent to prison because of the imposition of mandatory sentencing. But I would ask that some of the other members on the government side of the house consider that. I say that because we are all, sadly, part of supporting this move towards removing discretion from judges and imposing mandatory sentencing, and that is a bad move.

MR R.F. JOHNSON (Hillarys — Minister for Police) [11.48 am]: If ever there was a just reason to invoke the gag, we have just had it. We have just had a classic example from the member for Warnbro. The member for Warnbro must be the lead speaker on the Misuse of Drugs Amendment Bill for the other side, because he has been given more time to speak on it than any other member—certainly far more than the shadow minister, which I would find insulting if I were in her position. I would not have minded that if the member had talked about the bill, but he did not. It was a classic case of filibustering. I always say that when somebody delivers a speech in this house and spends most of their time using that as an excuse to insult and make slimy and snide comments about another member in this house, they have lost all credibility in their argument. We have just seen that from the member for Warnbro.

I want to pay a compliment to the member for Armadale. I did say to the member for Armadale earlier that he and I have different views on this bill. We have different views on law and order issues, and we probably will continue to have different views. But the member for Armadale is able to deliver a speech without the vitriol and the snide and insulting comments that we have heard from one or two members on the other side. In all my years in this Parliament I have never heard such nasty remarks from members, attributed to a member on the other side and —

A member: Take a look in the mirror!

Mr R.F. JOHNSON: No. I find the personal attacks that I have had to suffer from some members opposite quite extraordinary. I do not include the member for Girrawheen. Although she has a go at me from time to time, and that is fine, she does not sink to the personal level of one or two members opposite.

During the relevant comments that a couple of members opposite made—I include the members for Girrawheen and Armadale—questions were asked about the statistics and about the number of people not going to jail; about why this bill has a mandatory sentencing aspect for a second or subsequent offence by somebody who endangers a child in relation to clandestine drug labs or the cultivation of certain plants; and, of course, about why this legislation has a mandatory minimum sentence for anyone who causes a child bodily harm. I will tell the members why it is needed. The statistics are quite clear. I refer members to the article by Nicole Cox that appeared in *The Sunday Times* of 14 August 2011. It is headed “Clandestine cooks avoid sentences” and states quite clearly —

Last year, 46 per cent of those found guilty of manufacturing drugs went to jail and four in 10 convicted drug cooks received suspended jail terms.

Ms M.M. Quirk: So you rely on *The Sunday Times*!

Mr R.F. JOHNSON: Nicole Cox took the details from the statistics that we gave her.

Ms M.M. Quirk: All right.

Mr R.F. JOHNSON: I am telling members in text how the statistics were reported. I think that it was good because members of the public actually read the papers. They do not read *Hansard*, but they do read the papers. It is quite clear that lots of people were avoiding jail despite having set up a clandestine drug lab. The member for Girrawheen mentioned earlier that at one clandestine drug lab chemicals for the purpose of making illegal drugs were stored above a child's cot. I find that deplorable. All members in the house —

Ms M.M. Quirk: As do we.

Mr M. McGowan: So does everyone.

Extract from *Hansard*

[ASSEMBLY — Thursday, 22 September 2011]

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Mr R.F. JOHNSON: Members opposite seem to be very keen on trying to keep cannabis out of the equation. Last night they wanted to delete from the bill the cultivation of cannabis. Cannabis is a very serious issue. We know that Labor softened on that. I am not trying to score a political point. When Labor came to government in 2001, it decriminalised the sale of cannabis when it was less than 30 grams, which is a huge amount, and allowed people caught growing two cannabis plants—per person, per household—to avoid any sort of criminal conviction; all they had to pay was the equivalent of a speeding fine. We find that intolerable. Even the Attorney General of the day, Hon Jim McGinty, acknowledged the problem in 2006 and said that he was going to look at making the laws tougher because he could see they had been an abject failure. Yet last night, once again, we saw the Labor Party trying to extricate the cannabis cultivation parts of this very important legislation.

I am not going to spend any more time on this bill. I listened to members' comments and I have responded to the comments that were relevant to the bill. Other members just used the debate for personal vitriol, and I have to say that I find it appalling when those members revert to that level.

Question put and passed.

Bill read a third time and transmitted to the Council.