

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard; Deputy Speaker

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## **CANNABIS CONTROL BILL 2003**

### *Consideration in Detail*

Resumed from 15 April.

Debate was adjourned after clause 3 had been agreed to.

#### **Clause 4: Interpretation -**

Mrs C.L. EDWARDES: I refer the minister to the definition of “CES”, which means a cannabis education session. What is meant by paragraphs (a) and (b)?

Mr R.C. KUCERA: They are to enable the Director General of Health to approve the content of the cannabis education sessions.

Ms K. HODSON-THOMAS: Who is the authorised person referred to in clause 8(4)(b)(i)? Does “the Commissioner” mean the Commissioner of Police?

Mr R.C. KUCERA: The authorised persons will vary according to the functions within the context of that clause. I expect that the first two parts of clauses 8 and 10 refer to a police officer. That is no different from the standard practice for any other fines enforcement process within the Police Service. An authorised person referred to in clause 8(4)(a)(i) regarding receipt of money could be an unsworn officer or a member of the Police Service. There are three functions within the term “authorised persons”: the receipt of moneys, the extension of time that may be offered for issues that arise from the infringement notice and the withdrawal at some time of an infringement notice.

Ms K. HODSON-THOMAS: The minister has not confirmed whether “the Commissioner” means the Commissioner of Police.

Mr R.C. KUCERA: Yes; it is the Commissioner of Police. Commissioner is defined in the Misuse of Drugs Act. As I explained last night at length during debate on clause 3, this Bill must be read in conjunction with the Misuse of Drugs Act.

Mrs C.L. EDWARDES: Paragraph (a) under the CES definition refers to a content approved under section 16(2)(a). As the minister previously indicated, that is to be done by the Director General of Health. What is proposed as that content?

Mr R.C. KUCERA: Clause 16(1)(b) and (c) sets out what must be included in the education session. The education session must also take into account paragraph (a); that is, “the adverse health and social consequences of cannabis use”. Paragraph (a) must be flexible because it can vary according to the audience or the people being dealt with. Clause 16(1)(b) and (c) prescribes issues that must be included in the education service. Paragraph (a) provides that cognisance must be taken of that factor when developing the content.

Mrs C.L. EDWARDES: Is the minister indicating that different types of cannabis education services will be provided depending upon the persons who are attending; that is, the market? Will the education sessions differ depending on which persons are approved under 16(2)(b)? Who will be approved?

Mr R.C. KUCERA: They will be consistent. Standard guidelines will apply. Within those guidelines there is scope for some degree of variation particularly under the CES session described in paragraph (a); nonetheless, it will operate within a set framework.

Mr B.K. MASTERS: I am sure that the minister previously indicated roughly how long a cannabis education session might last. I would be grateful if he would repeat that. The minister might recall the story I told during the second reading debate. About 30 years ago, a young lad with whom I attended university was apprehended by the police for doing something wrong and given a caution, provided he attended a driver-education lecture. He arrived at the lecture drunk as a skunk. As soon as the lights dimmed in the auditorium he opened a window and climbed out.

Will any effort be made to determine the attendees’ sobriety or whether they are affected by drugs?

Mr M.J. BIRNEY: The cannabis education sessions might be treated as a bit of a joke by people who are considered to be serial cannabis users. A couple of fairly unruly individuals who have been caught for possessing cannabis might consider these education sessions to be a joke and have a big “session” before attending an education session to give themselves a good old belly laugh. The member for Vasse makes a very good point. I would be very surprised if the facilitators of the cannabis education session were not interested in the sobriety or otherwise of people attending these sessions. I am very interested in the minister’s comments.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mr R.C. KUCERA: I will deal first with the member for Vasse's issues. The normal length of an education session is about 90 minutes. However, in practice they last much longer than that because they provide an opportunity to not only educate, but also engage people who attend. The key issue is about increasing people's knowledge of the misuse of drugs and of their harmful effects, particularly the harmful effects of continued or past cannabis use. Counselling and other treatments are attached to educational sessions.

The issues referred to by the members for Kalgoorlie and Vasse are matters of commonsense. If a person who attended one of these sessions was not capable of completing the session, that person would be deemed not to have completed the session. He would have breached the spirit of the infringement notice and the proper penalty would be invoked. Unlike the cautioning program, this is not a tap on the wrist. This is a penalty. It is a mandatory program. If people do not enter into the proper spirit of it, the monetary penalties under the infringement notices will be applied. That is the spirit of the legislation. Neither the Government nor the Drug Summit were comfortable with the fact that the previous Government had not provided any prescriptive legislation or support for the Police Service. In fact the Police Service was left to hang out to dry essentially by the previous cautioning program. This Bill is prescriptive. If people flout the system or carry on in a silly manner, such as that suggested by the member for Kalgoorlie, the normal process will apply.

Ms S.E. WALKER: The minister said that under the cannabis education session there will be a regime of treatment such as counselling. What is meant by that? The clause does not make it clear.

Mr R.C. KUCERA: This not a straight education program, as I have already said; it will be delivered by trained treatment counsellors. Wherever possible, an attempt will be made to engage in counselling those people who are referred for treatment. It is often simply a matter of making sure that people are well aware of the harm that they are doing to themselves by using a dangerous drug like cannabis.

Ms S.E. WALKER: Does the minister envisage that some current program, treatment or counselling will be used under this legislation? Where does the Bill provide that if a person does not complete attendance at a lecture, the police will have the power to invoke another penalty?

Mr B.K. Masters interjected.

Mr R.C. KUCERA: It would be helpful if one set of questions was asked at a time. I am not questioning your role, Mr Speaker, but perhaps I may deal with the question from the member for Nedlands first.

The SPEAKER: The minister should disregard interjections, as I do.

Mr R.C. KUCERA: Thank you, Mr Speaker. I bow to your superior wisdom.

There are standard operating procedures for treatment processes. They are evidence based and have been for some time. We are using many of the protocols that have been adopted for treatment processes and counselling generally. Hon Kevin Prince and Hon Rhonda Parker said about the previous cautioning process that before the education session, only 47 per cent of people attending believed cannabis to be a harmful drug. That figure increased to 71 per cent after the session. In the follow-up evaluation of participants, 68 per cent reported less cannabis use after their caution and 42 per cent reported an intention to stop or to use less of it in the future. These programs and systems are well tested, well proven and evidence based, and they will be developed. Many of the issues that have arisen during the creation of this legislation and the protocols that will flow from it have come from the previous Government's cautioning programs. It is a good thing that we continue to learn and continue to develop. What was the second part of the question?

Ms S.E. Walker: You are relying on programs that are already established. Which established programs will be used under this legislation?

Mr R.C. KUCERA: The National Drug and Alcohol Research Centre has well-recognised programs. They do not merely entail a counselling and education session but are based very much on engaging the individual with counsellors and groups. If the member for Nedlands wishes, I am more than happy for her to attend one of the sessions at any time.

Ms S.E. Walker: Have you attended one?

Mr R.C. KUCERA: I have never had the necessity. If the member has, so be it, but I was well versed in them when I was a member of the Police Service. I have not attended a session as an offender, and I do not intend to. I am aware of some of the content, although not to the extent that I can be specific, and neither am I trained in counselling or treatment procedures.

Ms S.E. WALKER: I genuinely and sincerely want to know what the lecture program is. The minister seems to know what it is. If the lecture program is already established in the State and it will be superimposed as a result

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard; Deputy Speaker

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of this Bill, let us hear what the lecture program is. Perhaps the minister's advisers can tell us. The minister seems to be relying on the fact that similar programs are already operating in the State. I am merely asking what they are. I cannot get an answer from the minister. If the minister does not know, he should say so and that will be fine. The minister has not answered my second question. He said that if people do not go to a lecture, or fall asleep and do not participate, provisions in the Bill will allow a fine to be imposed because of such behaviour. Where are those provisions in the Bill?

Mr R.C. KUCERA: We are jumping ahead a bit, because the question refers to clause 17. Clause 17 provides for an approved provider to give a cannabis education session, and to issue a certificate of completion. It will not be given until the person has completed the CES, when a copy of that certificate will be sent to the commissioner. If that is not done, the normal conditions apply, as with any other infringement process, whereby a penalty will be invoked or the person will be sent to court. The option to be sent to court is always present. As the Government has said from day one, it has not decriminalised the process; the criminal sanctions are always available at the discretion of either the police or the person delivering the CES.

In response to the original question by the member for Nedlands, drug service teams are currently operating in the south metropolitan area, south east metropolitan area, north metropolitan area, north east metropolitan area, Perth, Kimberley, Pilbara, mid west, goldfields, wheatbelt, south west area and great southern area. If the member wishes, I can give all the individual places where they are situated.

Mrs C.L. Edwardes: Will you table the document?

Mr R.C. KUCERA: I will be more than happy to table it. The information was given out during the briefing sessions to those who chose to go to them. I thank those members who did attend, in particular the member for Churchlands, who applauded the people who gave those briefings yesterday. Even though she did not agree with some of the issues, her feedback was most helpful. I indicate to members on the other side of the House who have not yet had the opportunity to attend a briefing that I am more than happy for the team to facilitate a briefing.

A number of country party members raised a very important point yesterday.

The ACTING SPEAKER (Mr A.D. McRae): Is this related to clause 4 on interpretation?

Mr R.C. KUCERA: It is, Mr Acting Speaker, and to the question that was asked. To sum up, there are teams right across the State. Our intention is to expand and extend the capacity for those teams to operate in different areas. Further training sessions will be held. At the end of the day, some \$59 million is being spent on drug programs in this State.

The ACTING SPEAKER: I advise members that I have been listening to the debate for half an hour. It seems in some ways that we started where we left off last night. That relates to this point: there is a tendency in the consideration in detail debate for members to range into clauses that are referred to in the clause that is the question before the House but are not material to the question itself. I am advising members that under standing orders, they need to constrain debate to the question that is before the House. I ask members to give consideration to that as we proceed through the debate today. This will be my last advice to the Chamber on this point. I will commence sitting people down if they stray beyond what I believe is the question before the House.

Ms S.E. WALKER: I refer the minister to the cannabis education session.

The ACTING SPEAKER: Member for Nedlands, be seated please.

Mrs C.L. EDWARDES: I refer the minister to the question I was asking earlier about clause 4(b), which states that a cannabis education session will be provided by a person approved under proposed section 16(2)(b). The minister has referred, in answers to other questions, to trained treatment counsellors. Who will they be and how will they put their names forward in order to be approved? Mr Acting Speaker, as per your instructions -

The ACTING SPEAKER (Mr A.D. McRae): These matters are contained in clause 16(2)(a) and (b). They have nothing to do with the interpretation clause. The question is that clause 4 be agreed to.

Mr M.J. BIRNEY: I draw the minister's attention to a cannabis education session, which is contained in clause 4. Given that there is no restriction on the number of cannabis education sessions that a person may attend, what benefit does the minister think an individual may gain from attending a CES?

The ACTING SPEAKER: The member for Kalgoorlie has just done it again, after I have, for the third time, advised the House about the need to stick to the question. The standing orders require that members do that. If members have not read the standing orders, I advise them to read them so that they will understand what the parameters of this debate are. The question is that clause 4 stand as printed.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mrs C.L. EDWARDES: I have been in this House since 1989, and there has always been a fair amount of relaxation of the rules when questions are asked about the interpretation clause, because if the questions are not asked at this point they will be asked somewhere else. That is fine. We can ask the questions when we get to the particular clauses.

The ACTING SPEAKER: Indeed. If the member for Kingsley is canvassing my advice to the House, my response to her is that what she has suggested is precisely what I am advising members to do.

Mrs C.L. EDWARDES: I was merely making an observation, Mr Acting Speaker. I bring the minister's attention to the definition of "CIN", which "means a cannabis infringement notice given under section 5(1), 6(1) or 7(1)." I now bring the minister's attention to sections 6(2) and 7(2) of the Misuse of Drugs Act, because I suspect that those sections deal with the offences that are referred to. Will the minister clarify whether an error has been made or how it is to be interpreted?

Mr R.C. KUCERA: It is not an error. "CIN" means a cannabis infringement notice given under sections 5(1), 6(1) or 7(1) of this enactment. The other matters referred to are under the Misuse of Drugs Act. I think we canvassed at length last night that this Bill is to be read in conjunction with the Misuse of Drugs Act.

Mrs C.L. EDWARDES: I wonder then whether the minister would be kind enough to go through it slowly with me. Section 5(1) states -

A person who -

- (a) being the occupier of any premises, knowingly permits those premises to be used for the purpose of -
  - (i) the manufacture or preparation of a prohibited drug . . .
  - (ii) the manufacture, preparation, sale, supply or use of a prohibited drug . . .
- (b) being the owner or lessee of any premises, knowingly permits those premises to be used for the purpose of using a prohibited drug . . .
- (c) is knowingly concerned in the management of any premises . . .
- (d) has in his possession -
  - (i) any pipes . . .
- (e) is found in any place . . .

How does a CIN relate to sections 5(1), 6(1) or 7(1)? Section 6 deals with offences concerned with prohibited drugs generally. Subsection (1) states -

Subject to subsection (3), a person who -

- (a) with intent to sell or supply it to another, has in his possession;
- (b) manufactures or prepares; or
- (c) sells or supplies, or offers to sell or supply, to another,  
a prohibited drug commits an indictable offence . . .

Therefore, we have an indictable offence under section 6(1), which can now be dealt with by way of an infringement notice. The offence in section 5(1) is a simple offence. Section 7 deals with offences concerned with prohibited plants generally. Subclause (1) states -

Subject to subsection (3), a person who -

- (a) with intent to sell or supply a prohibited plant or any prohibited drug obtainable therefrom to another, has in his possession or cultivates the prohibited plant; or
- (b) sells or supplies, or offers to sell or supply, a prohibited plant to another,  
commits an indictable offence . . .

Again we have an indictable offence in section 7(1), an indictable offence in section 6(1) and a simple offence in section 5(1), and for all of those offences an infringement notice is now available. I ask the minister to link all of those up and clarify my understanding.

Mr R.C. KUCERA: As I said in my previous answer, the member has misread the definition of CIN. It is referring to clauses 5(1), 6(1) or 7(1) of the Cannabis Control Bill. It is not referring to the Misuse of Drugs Act.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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It is sheer coincidence that they are similar in their numbering. The member needs to go back to the Bill and read clauses 5(1), 6(1) and 7(1).

Mrs C.L. EDWARDES: I thank the minister very much for that clarification. It helps to bring the matter back into order. An infringement notice can be issued for an offence under section 5(1)(d), which deals with a person who has in his possession any pipes or other utensils, which is a simple offence. Section 6(2) deals with a person who has in his possession or uses a prohibited drug, which again is a simple offence. Section 7(2) deals with a person who has in his possession or cultivates a prohibited plant, which again is a simple offence. A cannabis infringement notice is available for such offences.

*Points of Order*

Mr J.C. KOBELKE: I appreciate that because clause 4 refers to a number of other clauses, members can make reference to them. However, it seems to me that for some time now the debate has been centring on clauses 5, 6 and 7, which are not before the House. I ask you to consider, Mr Acting Speaker, whether the contribution being made by the member is going beyond what is reasonable debate on clause 4.

Mr C.J. BARNETT: There is a difficulty of interpretation, and it relates to what was debated last night. Because this Bill will establish a separate Act rather than be included in the Misuse of Drugs Act, we have a confusion relating to interpretation. We might as well try to sort that out now. The confusion is of the Government's making, because it has created a new statute in addition to the Misuse of Drugs Act.

The ACTING SPEAKER (Mr A.D. McRae): I have now said, I think three times, that the debate needs to stick to the question that I have put that is before the House for consideration. I think the member for Kingsley has probably stretched the rubber band as far as it is going to go. The member may continue.

*Debate Resumed*

Mrs C.L. EDWARDES: I was being genuine in asking the question.

The ACTING SPEAKER: I have said that there is no point of order. The member may continue.

Mr R.C. KUCERA: I will repeat the answer that I gave earlier but will try to simplify it for the purpose of the Leader of the Opposition. Clause 4 is simply a definition of the term "CIN". CIN means a cannabis infringement notice given under section 5(1), 6(1) or 7(1) of the Cannabis Control Bill 2003. Having said that, we would then move to clauses 5(1), 6(1) and 7(1), which in turn refer to the Misuse of Drugs Act. It is a simple process that is often used in this kind of legislation.

**Clause put and passed.**

**Clause 5: CIN for offence under *Misuse of Drugs Act 1981* s. 5(1)(d)(i) -**

Mr M.J. BIRNEY: Members may recall that when we have been dealing with a CIN and who may or may not be given a CIN, the Minister for Health is on record as saying that the police will retain their discretion with regard to who they will charge for dealing for having 30 grams of cannabis, or less, or two plants. Opposition members have searched through the Bill to work out exactly what the minister meant when he said that the police will retain discretion. I draw members' attention to clause 5, which states -

A police officer . . . may, subject to subsection (2), within 21 days after the alleged offence is believed to have been committed, give a cannabis infringement notice to the alleged offender.

The inclusion of the word "may" in that clause was presumably what the minister meant when he said that police would retain the discretion to charge somebody as a dealer or simply give him a cannabis infringement notice. I do not need to remind members that a police royal commission is currently under way in Western Australia. One of the most startling allegations to come out of that police royal commission is that police officers have been knocking off drug dealers' drugs and money. Surely, in the light of those startling revelations from the police royal commission, a word such as "may" should not be included in clause 5(1), because that word conjures up the image that a police officer may hand out an infringement notice or he may not. That presumably is the discretion that the Minister for Health spoke about. As shadow Minister for Police, I will go on the record here and now as being terribly concerned about the discretion that this one word could give to police; that a police officer may issue a CIN. I am interested in whether the Minister for Health believes that this clause would put our Police Service in an untenable position, and whether it could lend itself to police corruption at some stage in the future.

Mr R.C. KUCERA: No.

Mrs C.L. EDWARDES: I turn the minister's attention to the first two lines of clause 5(1) -

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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A police officer, other than a police officer who is an authorised person for the purposes of -

The clause then refers to the clauses that relate to authorised persons for the purposes of collecting money, extending the 28-day period, and withdrawing CINs. I ask the minister to identify how that clause will operate in practice, particularly in isolated locations, regional areas, and small police stations.

Mr R.C. KUCERA: That is standard procedure in any infringement process. For instance, the person who runs the traffic infringement notices at the moment would not issue infringement notices himself or herself. He or she has a specific role in terms of the receipt of money, the extension of time and the withdrawal of those notices.

Ms S.E. WALKER: Clause 5 currently refers to section 5(1)(d)(i) of the Misuse of Drugs Act. I ask the minister to take me through the provisions of the Misuse of Drugs Act that currently outline that the possession of utensils is a simple offence, and also the penalties currently available to police officers.

Mr R.C. KUCERA: I refer the member to section 34(1)(d) of the Misuse of Drugs Act, under the heading "Penalties", which states -

a simple offence under section 5 (1) (other than a simple offence under section 5 (1) (e)), 8, 15 (2), 20, 25 (2) or 29 is liable to a fine not exceeding \$3 000 or to imprisonment for a term not exceeding 3 years or both;

All that the Cannabis Control Bill does is to simply allow the police to use an alternative penalty by issue of an infringement notice.

Ms S.E. WALKER: I refer to section 34 of the Misuse of Drugs Act. Was the minister referring to subsection (1)(e)?

Mr R.C. Kucera: No, subsection (1)(d).

Ms S.E. WALKER: I ask the minister to explain how that subsection relates to section 5(1)(d)(i) of the Act?

Mr R.C. Kucera: By simply reading the provisions of clause 5 of the Bill.

Ms S.E. WALKER: I ask the minister to explain what section 34(1)(d) of the Misuse of Drugs Act states in terms of what it applies to under section 5 of that Act?

Mr R.C. KUCERA: All simple offences covered under section 5(1)(d) and (1)(e) are covered by section 34 and referred to in section 34(1)(d).

Mr M.J. BIRNEY: I will pick up on the point I made a few moments ago about the discretion this clause will provide to police officers to either charge an alleged offender or issue him with a cannabis infringement notice. Clause 5(1) states that a police officer may issue an infringement notice. I assume that a police officer may choose not to charge an individual or issue him with a CIN notice; otherwise, the clause would state that a police officer will issue a CIN notice. I ask the minister to advise the House under what circumstances a police officer may not issue a CIN to somebody who is caught with the prescribed amount of marijuana.

Mr R.C. KUCERA: It will occur either at the discretion of the police officer concerned - the intent of this legislation was to allow discretion - or when it is prescribed.

Mr M.J. BIRNEY: I am concerned about this clause. The Minister for Health has basically said that the issuing of cannabis infringement notices will be at the discretion of police officers. Police officers do not want that discretion. They look to this Chamber of the Parliament and to the person sitting in that chair for some legislative guidance. The Minister for Health has the opportunity to provide that guidance to our police officers on the street. This is his opportunity to tell them that they may exercise discretion under certain circumstances and may not exercise discretion under other circumstances. In the absence of some legislative guideline or direction from the minister responsible for the Bill, I hold some grave concerns for the police officers who may find themselves in a situation that lends itself to corruption. Under what circumstances would a police officer exercise that discretion by not issuing a cannabis infringement notice?

Mr R.C. KUCERA: I suspect that the member for Kalgoorlie's concerns are rhetorical, because he obviously does not understand and has not read the Bill properly. Police officers have discretion as it stands under the office of constable. The Government proposes to give the police an extra weapon by allowing them to issue cannabis infringement notices. It will be a simple matter for a police officer to issue an infringement notice if he finds a smoking implement. That is why I believe the question asked by the member for Kalgoorlie is somewhat rhetorical. This clause relates to smoking implements and bongs, and not the possession of cannabis. It is highly likely that a police officer would issue an infringement notice in such a situation, rather than go through the convoluted process of charging an offender.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mr M.J. BIRNEY: In the minister's view, would an individual who has been caught for the first time breaching these regulations be allowed some discretion by police by way of the non-issue of a CIN?

Mr R.C. KUCERA: In my view an individual would not be allowed that discretion; the police officer would issue an infringement notice. I expect that that is the kind of issue that would be canvassed in the standard operating procedures prepared by the police as part of their normal operations when legislation is introduced.

Mrs C.L. EDWARDES: I take the minister back to my previous question and his answer. In a police station such as the one in Menzies, which is a two-man police station, who will issue the infringement notice and who will be the authorised police officer under clauses 8(4)(b)(i), 10(1) or 11(1)?

Mr R.C. KUCERA: The system will be the same as the one currently in place. The Government does not intend to create a parallel or another system. The officer at the police station would issue an infringement notice. The infringement notice would go to a centralised base, which I understand is currently in Perth, and be duly processed by the authorised officers.

Mrs C.L. EDWARDES: Menzies is in the Kalgoorlie police district but the matter would be referred to Perth? Is that what happens now? What is the time frame and are there any problems that are currently experienced in the ordinary system?

Mr R.C. KUCERA: As I have already said, there is a 28-day provision in the legislation; we expect it to be enacted within 28 days. As with other country infringement notices, there is the capacity for an extension of time, taking into account the size of the State.

Ms S.E. WALKER: I want to get this clear, because it was not made clear before when I asked the minister about section 34 of the Misuse of Drugs Act. Clause 5 of this Bill is about pipes and utensils, clause 6 is about possession and clause 7 is about cultivation. Under section 5 of the Misuse of Drugs Act, a person who is an occupier of premises and has any pipes or utensils in his possession commits a simple offence.

Mr R.C. Kucera: That is correct.

Ms S.E. WALKER: Section 34 of the Misuse of Drugs Act deals with penalties. The minister referred to section 34(1)(d) but in fact it is section 34(1)(e). Clause 5 of the Cannabis Control Bill refers to section 5(1)(d)(i). Section 34(1)(e) does not refer to section 5(1)(d)(i), it refers to section 5(1)(e). Is it not the case that section 34(1)(e) refers to section 5 of the Misuse of Drugs Act? Does the minister get my drift?

Mr R.C. Kucera: The explanation is that it is a simple offence under section 5(1) other than a simple offence under the other provisions. The offender is liable to a fine not exceeding \$3 000 or a term of imprisonment not exceeding three years. It simply creates two different penalties for the simple offence. It is as simple as that. The simple offence can be subject to two different penalties.

Ms S.E. WALKER: Clause 5 is titled "CIN for offence under Misuse of Drugs Act 1981 s.5(1)(d)(i)".

Mr R.C. Kucera: I refer the member to section 5 of the Misuse of Drugs Act. Paragraphs (a) to (d) create an offence with a penalty of \$3 000 or three years imprisonment. Paragraph (e) creates an offence with a penalty of \$2 000 or two years imprisonment. Paragraph (d) creates two different regimes of penalty depending on which provision a charge is preferred under.

Ms S.E. WALKER: Clause 5 of the Bill refers to section 5(1)(d)(i) only of the Misuse of Drugs Act.

Mr R.C. Kucera: Exactly, it is an offence. The provision under the Cannabis Control Bill deals only with paragraph (d), which refers to pipes and utensils.

Ms S.E. WALKER: I want to clear this up.

Mr R.C. Kucera: It is clear in everyone else's mind.

Ms S.E. WALKER: I want it cleared up in my mind because other people may be as confused as I am.

Mr R.C. Kucera: I doubt that.

Ms S.E. WALKER: I again refer the minister to section 5, which refers to the person having in his possession a pipe or utensil -

Mr R.C. Kucera: The member is confusing two different provisions. Section 5(1)(d) refers to the possession of pipes or utensils. Section 5(1)(e) states: is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant. It is a different issue altogether.

Ms S.E. WALKER: I am talking about relating the provisions in clause 5 of the Bill to the Misuse of Drugs Act.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mrs C.L. EDWARDES: I would like to hear more from the member for Nedlands on this.

Ms S.E. WALKER: The Cannabis Control Bill refers to an offence under section 5(1)(d)(i) -

A person who -

...

has in his possession -

- (i) any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant; . . .

except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so, commits a simple offence.

Which provision in the penalties section of the Misuse of Drugs Act applies to that offence?

Mr R.C. Kucera: Section 34(1)(d). I cannot be any clearer than that.

Ms S.E. WALKER: Therefore, a person who has in his possession “any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant” is subject to a fine not exceeding \$3 000 or imprisonment for a term not exceeding three years or both - yes?

Mr R.C. Kucera: That is correct.

Ms S.E. WALKER: The provisions under clause 5 of the Cannabis Control Bill give to a police officer the option of another penalty.

Mr R.C. Kucera: It is another way of dealing with the matter.

Ms S.E. WALKER: It allows further penalties.

Mr R.C. Kucera: In addition to a penalty.

Ms S.E. WALKER: It softens the penalties. It is in black and white under section 34 that the penalty can be up to \$3 000 or three years imprisonment or both. I actually thought it was less; I thought it was \$2 000 or two years imprisonment.

Mr R.C. Kucera: The previous Government softened the process by putting in place a cautioning process. The penalties still stand as the member has described them. In addition, the police can use another penalty as an alternative to an infringement notice.

Ms S.E. WALKER: Absolutely. That is what I am saying. There is no change in the offence. The penalty is currently \$3 000 or three years imprisonment or both. The Misuse of Drugs Act should have been amended, because this legislation gives softer penalties.

Mr R.C. Kucera: No. On average, the penalty given by courts is between \$50 and \$100. There is no discretion about penalties when an infringement notice is used. The penalty ranges from \$100 to \$200, which is far more than the current regime introduced by the previous Government.

Ms S.E. WALKER: No. The minister is putting an interpretation on it. The current law refers to three years imprisonment or a fine of \$3 000. Courts can give a fine of \$100; I am not disputing that.

Mr R.C. Kucera: The current law has not changed.

Ms S.E. WALKER: I know that. I am not disputing what the courts give; I am looking at the law at the moment under the Misuse of Drugs Act. The penalty is three years imprisonment, a fine of \$3 000 or both.

Mr R.C. Kucera: The current situation -

Ms S.E. WALKER: Will I be allowed to put my point to the minister or will he keep interjecting? If he does, I will sit down and he can stand. My point is that currently the law provides for a penalty of \$3 000 or three years in prison or both. Clause 5 of the Cannabis Control Bill provides further penalties that can be chosen by the offender. Under the infringement notice scheme, it will not be the police officer who chooses the penalty; it will be the offender. We will get to that clause. The offender will choose. The penalties in the Act are a \$3 000 fine or three years imprisonment. Under this Bill, the offender could write to the court and ask it to deal with him under that provision, or he could receive an on-the-spot fine or a lecture. I suggest that this clause was not included in the Misuse of Drugs Act because that would show that there is a softening of the penalties.



Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mr R.C. KUCERA: The member for Nedlands is wrong. The current legislation stands as is. There has been no change to the penalty. We have simply given the police an alternative to the cautioning process, which was a slap on the wrist. We have given them an alternative practice, and we are enshrining that practice in the Cannabis Control Bill so that there is a prescription. The accused does not have any choice. He or she either gets an infringement notice or goes to court. It is as simple as that. The only choice occurs later, when the offender may elect to attend an education session. That is the only choice. The choice of a penalty once the infringement notice is issued has nothing to do with the accused in the first instance. There is certainly no softening. If anything, this is a much tougher approach to the issues, and it does not leave the police swinging in the air without some road to go down.

Mr C.J. BARNETT: I very much thank the member for Nedlands for explaining to members in this House how this clause will soften the penalty. To my knowledge, this part of the Misuse of Drugs Act was not amended by the previous Government. We are talking about a 1981 statute. The maximum penalty for possessing an implement, a utensil or paraphernalia - whatever members want to call it - is a \$3 000 fine or a three-year jail term. Clause 5 and the introduction of a cannabis infringement notice will mean there is now an option for penalties, and that option is a soft option. It does not matter whether the accused goes to the courts or is issued with an infringement notice. A subsequent clause provides the offender with a choice if an infringement notice is issued. It does not matter how many steps we go through; it is absolutely black and white. This is why this Bill is soft on drugs. We have gone from a maximum penalty of three years in jail to the option of attending a lecture. That is why this legislation is soft on drugs. It has taken some time for the member for Nedlands to show the link between this legislation, the cannabis infringement notice and the Misuse of Drugs Act. It is in black and white. This Bill is soft on drugs. We will go from a three-year jail term to allowing the offender to turn up to a lecture if he wants.

Mrs C.L. Edwardes: Yes, and the modified penalty is a maximum of \$400.

Mr C.J. BARNETT: It is a joke. It is an absolute farce for this minister to suggest that it is a tougher approach. He has been caught out. He was bowled middle stump by the member for Nedlands. He has been unable to justify anything he has said. He talked about the Liberal Party's laws and changes. Sorry, but we did not legislate. The cautioning system was not an element of legislation. This is legislation, and by this legislation the Government is effectively replacing a maximum penalty with options, the least serious of which is to let the offender attend a lecture if he wants. It is the softest, weakest approach to cannabis utensils and paraphernalia I have ever contemplated.

Mr R.C. KUCERA: I am rather pleased that the Leader of the Opposition does not play in any cricket team I am in, because we would never get anybody out.

If the Leader of the Opposition is seriously suggesting that the member for Carine's son should be jailed for three years for smoking cannabis or being in possession of a bong -

*Withdrawal of Remark*

Mr C.J. BARNETT: It is a longstanding convention of this House that members do not refer to other members' children or families. It is highly improper behaviour. It is offensive to members and unreasonable. Mr Acting Speaker, I ask you to use your discretion to caution the minister to not refer to members' families in this House. It is improper.

The ACTING SPEAKER (Mr A.D. McRae): The Leader of the Opposition is correct to raise that. Standing orders say that a member shall not make personal reflections about a member of this place. I think that extends to reflecting on the child of a member. I ask the minister to withdraw the remark.

Mr R.C. KUCERA: I withdraw. I was simply referring to references made by the member for Carine herself.

*Debate Resumed*

Mr C.J. Barnett interjected.

The ACTING SPEAKER: Leader of the Opposition!

Mr R.C. KUCERA: Is the Leader of the Opposition seriously suggesting that people should go to jail for three years for having a bong? That is exactly why we are giving police the discretion to use infringement notices. If the Leader of the Opposition thinks that giving people a \$150 penalty rather than a slap on the wrist is a softening of the law, I am afraid he needs to read the clauses properly, because obviously he has not.

Dr J.M. WOOLLARD: I have read section 5 of the Misuse of Drugs Act. The minister and the Leader of the Opposition referred to anyone who is in possession of a bong. Section 5(1)(d) of the Act clearly states -

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant;

I thought it important to bring that to the minister's attention. I do not agree with the practice, but local supermarkets sell these bongs and pipes. I would very much like it to be illegal to sell that equipment. However, it would be very difficult for this Government to introduce something to achieve that because of its approach to the use of cannabis.

I heard what the member for Nedlands had to say about clause 5. It seems to me, and it will seem to most people, that the difference between a \$3 000 fine or a three-year jail sentence and a cannabis infringement notice is like the difference between chalk and cheese. We have gone from one end of the spectrum to the other. As I have said, the community does not want someone who - maybe due to peer pressure - smokes an occasional joint to receive a criminal record. However, this Bill is taking that attitude to the extreme. I do not believe that the minister can say that he is being harsher on people who are using cannabis when the penalty of a \$3 000 fine or three years jail will be reduced to an infringement notice.

Mrs C.L. EDWARDES: I follow up on the point made by the member for Alfred Cove. The minister said that section 5(1)(d)(i) of the Misuse of Drugs Act relates merely to someone who has a bong in his possession. I point out to the minister, as I am sure he is aware, that section 5(1)(d) and, by connection, clause 5 of the Cannabis Control Bill do not merely relate to the possession of any pipe or other utensil for use in connection with the smoking of a prohibited drug or prohibited plant. It states that cannabis use must be involved. It must also be "in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant". In this instance, when that is related to clause 5, there must be evidence or traces of cannabis. Therefore, we are not just talking about a brand new bong that has been picked up. It is not a matter of a person just having a bong in his possession; it is one which is in a person's possession and which has been used in some way, because cannabis is detectable in the pipe. We are saying that the penalty is being reduced - \$3 000 or three years imprisonment. It must be kept in mind - because we will come back to this - that the minister is talking about persons who have reached 18 years of age. Under section 34 of the Misuse of Drugs Act, the penalty for this offence is \$3 000 or three years imprisonment. Under this Bill, the Government is providing for a cannabis infringement notice to be issued. The modified penalty is a prescribed amount of no more than \$400. The Government is prescribing a softer penalty for that offence, and the Opposition still regards that offence as serious.

Mr R.C. KUCERA: I thank the member for Kingsley for pointing out to the member for Alfred Cove the portent of this clause. She is quite right. It does not apply to new utensils. In fact, as the member for Murdoch said in his personal explanation the other day, that was a loophole in the law at the time - he did not say it in so many words - that allowed him to operate his business. There must be detectable traces on the pipe or utensil. The point being missed is that more than 70 per cent of the people who were canvassed about bongs and so on were of the opinion that there should be a regime of civil penalties with prohibition, which is exactly what we are talking about. That is the same measure that was described by Hon Rhonda Parker under the previous regime, which was a caution. The difference between a caution and a monetary penalty, to me, is quite severe, and I fail to see how the Opposition can say that this is a softening of the penalty.

Dr J.M. WOOLLARD: The minister thanked the member for Kingsley for notifying me, as the member for Alfred Cove, that there must be detectable traces on the pipe or utensil. Perhaps the minister is a little hard of hearing after such a late night last night. In fact, I brought it to the minister's attention that section 5(1)(d) of the Misuse of Drugs Act states "in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant". I just wanted to give the minister an opportunity to perhaps adjourn the debate at this point to have a cup of coffee, because I am sure that government members will be feeling very tired after keeping everyone here until four o'clock in the morning.

The DEPUTY SPEAKER: I suggest that the member address the clause at hand rather than steer off in that direction.

Ms S.E. WALKER: I refer to the member for Kingsley's comments about tracing any illegal drug elements in the pipe or utensil. If I understand this correctly, that is why the "within 21 days" phrase is in clause 5, because the article will go to the government chemist for analysis. I think that is right.

Mr R.C. Kucera: That is correct. However, that is only if there is a dispute. If the person wishes to pay the fine under the infringement notice, there is no dispute.

Ms S.E. WALKER: That would not be right, would it, because the police would not know whether there was anything in the utensil unless they checked it? They could get somebody to plead guilty to an incorrect offence.

Mr R.C. Kucera: That is the current practice with all infringement notices.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Ms S.E. WALKER: I am not talking about other infringement notices; I am talking about possession of a bong and an offender incurring a penalty on the assumption that there are traces of a drug such as cannabis in it when there are not. However, putting that to one side, I will deal with subclause (1) and the provision relating to persons who have reached 18 years of age. Clause 5 of the Bill relates to section 5(1)(d)(i) of the Misuse of Drugs Act. How are children dealt with under that section, because there is no provision in that Act for persons who are 18 years of age? Under what Act are children dealt with, and how are they dealt with in the Children's Court? This is a very important issue.

Mr R.C. KUCERA: As I stated repeatedly last night to the member for Nedlands, it is an offence that can be dealt with under the provisions of the Young Offenders Act. I will deal with the member's first query. If it is admitted and it is obvious that a bong has been used for smoking cannabis, the police officer will issue an infringement notice. It is as simple as that. If the person accepts that infringement notice and pays the penalty, or seeks a cannabis education session, and there is no dispute, the matter will go through. If there is a dispute, obviously the capacity to have the material analysed will be used. Advice was sought on that matter when we were drafting the Bill.

Ms S.E. WALKER: I refer again to the provision for persons who have reached 18 years of age and how children are dealt with currently under the provisions of the Misuse of Drugs Act. The minister said that they were dealt with under the Young Offenders Act. Under the Young Offenders Act children are cautioned. In part 5, division 1, section 22A states -

The purpose of this Division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the young person instead of starting a proceeding for the offence.

Section 22B states -

A police officer, before starting a proceeding against a young person for an offence, must first consider whether in all the circumstances it would be more appropriate -

- (a) to take no action; or
- (b) administer a caution to the young person.

The commentary in Brown's *Criminal Law Western Australia* states -

Where the offence is one for which a caution cannot be given, listed in Schs 1 and 2, a caution cannot be given.

Will the minister tell me whether currently a caution can be given to a child under section 5(1)(d)(i) of the Misuse of Drugs Act; and, if so, where is it contained in the schedule?

Mr R.C. KUCERA: First, as I said repeatedly to the member for Nedlands yesterday, this legislation does not disturb in any way the Young Offenders Act; it does not apply to the Young Offenders Act.

Mrs C.L. Edwardes: Except that you keep talking about young people.

Mr R.C. KUCERA: My son is 33, and I still consider him to be young.

Mrs C.L. Edwardes interjected.

Mr R.C. KUCERA: Some days I feel very young. In fact, I feel very young this morning, despite what the member for Alfred Cove said.

Mr P.B. Watson: You look sensational.

Mr R.C. KUCERA: I thank the member for Albany.

I keep bringing the member for Nedlands back to the Young Offenders Act. Sections and schedules in that Act state what is and is not an offence. The Cannabis Control Bill refers to the Misuse of Drugs Act in the same manner that the Young Offenders Act refers to that Act. However, I keep repeating that this Bill is about people who are 18 years of age and over. The Young Offenders Act is not disturbed or affected in any way by the provisions of the Cannabis Control Bill.

Ms S.E. WALKER: This is important because it is what applies to children currently. This Bill refers to people over 18 years of age. I have just gone through the provisions of the Young Offenders Act.

*Points of Order*

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mr J.C. KOBELKE: The member is speaking about something that is not contained in clause 5. There has been considerable debate on it already. The minister has responded, indicating that it is not a matter covered by this Bill, let alone this clause. On that basis, the member needs to relate her comments to clause 5, which is currently before the Chamber.

Mrs C.L. EDWARDES: Further to the point of order, although I pick up the point raised by the Leader of the House, it is clearly no point. This clause specifically refers to and amends the Misuse of Drugs Act for those over the age of 18. This Bill does not apply to those under the age of 18. I accept that. In further clauses the Bill refers to the Young Offenders Act. However, when dealing with penalties, offences etc, it is important to clarify the law that will now apply to the people of Western Australia. It is important that this House, as well as the people in the community who will have to abide by these laws, get an understanding of the legislation.

Ms S.E. WALKER: Further to the point of order, I am trying to ascertain the current law so that we can understand how the Bill will change the law. As parliamentarians, we are entitled to do that.

The DEPUTY SPEAKER: The clause at hand deals with a cannabis infringement notice for offence under the Misuse of Drugs Act. It is clear that it in no way directly relates to any other Act. It deals with the Misuse of Drugs Act and with those officers who have reason to believe that a person has reached 18 years of age. I suggest that the member address herself specifically to that issue.

*Debate Resumed*

Ms S.E. WALKER: I will come at it another way. This clause relates directly to section 5(1)(d)(i) of the Misuse of Drugs Act. Can the minister tell me whether that section is the subject of a caution for children under the Young Offenders Act. That directly relates to this clause.

Dr J.M. WOOLLARD: The minister has stated that the whole of this Bill is for people over the age of 18. Clause 5 states that a police officer, other than a police officer who is an authorised person, has reason to believe that a person who has reached 18 years of age has committed an offence. If a police officer goes to a household in which there is a 17-year-old, a 20-year-old, a 30-year-old or even a parent who has cannabis and bongs with traces of marijuana on them, what is to stop the older person stating that it all belongs to the younger person? The laws are very different now. How does the minister intend the police to address that?

Mr R.C. KUCERA: The status quo remains. The Bill will not in any way interfere with the current situation. The same situation that applies now will apply in future. Likewise, if the member for Alfred Cove had her photograph taken while she was driving a motor vehicle, no doubt she would have a look at the photograph to make sure she was driving and not her husband.

Ms S.E. WALKER: What would happen if a police officer went to a house, found a young person with six bongs, the young person said, "They're all mine; I've smoked them; you've caught me bang to rights", and the police officer issued him with a CIN and it turned out that he was under 18 years of age? What would happen in law to a 17-year-old person in that case?

Mr R.C. KUCERA: I am quite surprised that a trained lawyer would ask that question.

Ms S.E. Walker: You seem to be trying to stop me talking about children.

The DEPUTY SPEAKER: Order, member for Nedlands!

Mr R.C. KUCERA: As a trained lawyer, the member for Nedlands knows that a person under the age of 18 would be dealt with under the Young Offenders Act, which Act was introduced by the previous Government.

Mrs C.L. EDWARDES: This whole debate has ensued primarily because of the minister's comments, particularly in his second reading speech and subsequent to that. He has stated that the Bill's success should be monitored and evaluated by reference to its impact on the willingness of young people in particular to seek help in dealing with cannabis-related problems. We have attempted to determine to whom the minister is referring when he says "young people". Clause 5 states "a person who has reached 18 years of age". It refers to people 18 years of age and over. It is not just young people. It is not just the 20-year-olds, the 30-year-olds, the 40-year-olds, the 50-year-olds, the 60-year-olds or the 70-year-olds; it is also the 80-year-old young people. The minister has misled the people of Western Australia and this Parliament by consistently saying that this Bill will have a major impact on young people, including when he referred to the member for Carine's child as a young person. He deliberately misled this House by trying to imply that this Bill would have an impact on people under 18 years of age, and he is not even willing to answer any questions about it!

Ms S.E. WALKER: The minister did not answer my last question. Can he tell me this: if a person is wrongly given an infringement notice because he is under 18 years of age, what penalty or offence would apply to him?

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Mr R.C. KUCERA: If a person is under the age of 18 years, he is a juvenile and will be dealt with under the Young Offenders Act and the penalties of that Act would apply.

Ms S.E. Walker: What is the penalty? That is what I am asking. What is the provision and what is the penalty under the Young Offenders Act?

The DEPUTY SPEAKER: The clause at hand does not deal with that issue. The member needs to canvass it in another clause.

Ms S.E. Walker: Why?

The DEPUTY SPEAKER: Because there are procedures in this place. We are in consideration in detail and the Bill is being considered clause by clause. The clause at hand is clause 5 and I ask members to address their questions directly to that clause.

Ms S.E. WALKER: Under clause 5, if a person who is not 18 years of age is issued with a CIN, what provision, law or penalty under the Young Offenders Act would apply to him? How would this Bill apply to him?

The DEPUTY SPEAKER: Under Standing Order No 97, I find that the member has asked the same question a number of times; therefore, either she redirects it in a totally new way or I will suggest that the House move on. The question is that clause 5 stand as printed.

Dr J.M. WOOLLARD: As I have said before, I wonder why the Bill was not called the cannabis decriminalisation Bill for over 18s.

*Point of Order*

Mr J.C. KOBELKE: Although the member has spoken for only a few seconds, clearly she is in contravention of standing orders, because the member is repeating comments she has made a dozen times on other clauses and they have nothing to do with clause 5.

The DEPUTY SPEAKER: Members, I was distracted and did not hear the comments of the member for Alfred Cove. However, the member knows how I have ruled in the past few minutes; therefore, I ask her to address her comments directly to clause 5 and not repeat any previous comments.

*Debate Resumed*

Dr J.M. WOOLLARD: Clause 5 relates to a cannabis infringement notice and states -

- (1) A police officer, other than a police officer who is an authorised person for the purposes of section . . . who has reason to believe that a person who has reached 18 years of age has committed an offence under section 5(1)(d)(i) of the *Misuse of Drugs Act 1981* may, . . . within 21 days after the alleged offence is believed to have been committed, give a cannabis infringement notice to the alleged offender.

When my teenagers go out, one of my younger daughters is often taken to be older than my eldest daughter. This provision was discussed in the House yesterday. Children are first introduced to cannabis in the early years of secondary school, which can then lead to their using hard drugs. By the time they reach 18 years of age, to which this clause refers, they might not only be taking cannabis but also they might be drug dealers. That might even happen by the time some of them reach the ages of 16 or 17.

The DEPUTY SPEAKER: Member, I have allowed for a lot of latitude but you are not addressing the specific issue contained within clause 5. I ask that you draw your comments to that point.

Dr J.M. WOOLLARD: If the police have reason to believe that a drug dealer within an area is a 16 or 17-year-old, then under the Government's new legislation, what will happen to that drug dealer?

The DEPUTY SPEAKER: I rule that that question does not direct itself to clause 5. The clause notes show that clause 5 deals with offences concerned with prohibited drugs and plants in relation to premises and utensils. It is clear that the provision is dealing with those who have reason to believe that a person has reached 18 years of age. Member, you must reconsider your question in the light of what the clause is about.

Mr B.K. MASTERS: I will comment further on the issues raised by the members for Kingsley and Nedlands about the 18 years of age provision in clause 5. I do not know what the Misuse of Drugs Act means for people under the age of 18. However, the minister continues to repeat that this legislation is designed to protect young people. Why was the age of 18 years chosen? Why not 15, 16 or 17 years of age, with amendments being made to the Misuse of Drugs Act 1981 to reflect the concerns of this minister and this Government; that is, to ensure

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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there is no dark stain or black mark against the name of a young person who is caught the first, second or third time when experimenting or playing around with drugs? Why has the minister settled on the magical age of 18?

Mr R.C. KUCERA: There are a number of reasons. First, 18 is the age of legal responsibility. That is the first legal process that comes into play under this provision. Secondly, there is already an adequate Young Offenders Act that clearly differentiates between juveniles - people who come under the Young Offenders Act - and those that I consider to be young at 18 years of age, and probably young up to 80 years of age. There is a clear differentiation between adults and juveniles in the Cannabis Control Bill. The Young Offenders Act will deal with juveniles, and adults will be dealt with by this legislation.

Mr B.K. MASTERS: I am not convinced by what the minister said. I would think that if he were genuinely concerned about young people, he would consider the age of consent or the adult age of 18 to be pretty irrelevant. The minister should consider what is happening in the real world. Young people are starting to have sex at the age of 13 or 14. When I took up smoking I was 14 years of age, which was about 30 years ago. The fact that 18 years of age is the age at which one legally becomes an adult is irrelevant. Consideration should be given to what is happening on the streets. Anyway, the minister has been recorded in *Hansard*, so I thank him for his comments.

Why has 21 days been stipulated further on in clause 5(1)? Why does a police officer need 21 days in which to decide that a cannabis infringement notice is to be given to a particular person for a cannabis-related infringement? I would have thought that the officer could issue a CIN on the spot; in other words, treat it like an infringement notice. Why are 21 days needed instead of 28 or 14 days? Again, the minister has a police background and I do not. Can the minister explain the logic behind choosing 21 days?

Mr R.C. KUCERA: It comes from common practice and it is a tradition of practice that has developed over the years. A number of things can be carried out after apprehending someone for an alleged offence in terms of observation and the issues that have been raised this morning such as checking his age, testing the bongs and the equipment that we are talking about and so on. It is an arbitrary figure that has been arrived at. The police advised us on that figure and felt that that was a workable time in which to allow this process to work properly. It also gives people the opportunity to decide whether they wish to pay the infringement fine and it gives the police time to decide whether to issue one. It is a win-win situation for both sides.

Mr B.K. MASTERS: Further to that comment, earlier I mentioned that I presumed it would be possible for a police officer to issue a CIN on the spot -

Mr R.C. Kucera: That is the intention of the provision.

Mr B.K. MASTERS: Is the minister expecting that a CIN will generally be issued on the spot and that 21 days will be needed only when there are - I will not say unusual circumstances - difficulties or uncertainties about certain aspects of the matter?

Mr R.C. Kucera: That is a fair comment. It is the intention to issue the notice on the spot. However, it gives the police some capacity to vary that practice if they feel that a circumstance warrants that.

Mr B.K. MASTERS: On a slightly different theme, if police officer A - I had better not call him T1 or T2, as that might have a few too many implications - issues an infringement notice to a person in the morning, and a second police officer issues an infringement notice to the same person in the afternoon for a cannabis-related offence, can the second infringement notice be withdrawn or somehow modified, recognising the provision under clause 13 and the heading "Completing one CES for multiple CINs"? I take it that the logic is that if more than one CIN is issued, it is entered into a database of police records that one cannabis education session is effective against more than one CIN. Is that how it is expected to work?

Mr R.C. KUCERA: I am not sure whether that relates to this particular clause. However, the intention of that provision is that if a police officer enters a house and finds cannabis, a bong and the remains of a plant etc, the owner will be charged or given an infringement notice for each of those instances in which the law has been broken. That person would also lose his cannabis, his bong, his plants and everything else that went with it. The only time that the two notices that have been issued on the same person are brought together is when they are considered to be related. On that occasion the person would have the option to elect for an education session. I expect that two separate matters involving different police officers would be dealt with separately. The police advise me that that is the intention of the Bill. It is not the case, as was suggested by the member for Nedlands the other day in the House, that people can bank up offences and keep adding them on. That is not the intention of the Bill and that will not occur. Again, that was misleading information given to the House.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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Ms S.E. WALKER: I refer to the question from the member for Vasse about why the Bill refers to a person who has reached 18 years of age. Will the minister agree that it is irrelevant to go below that age because the Young Offenders Act authorises a caution to be given to an alleged offender?

Mr R.C. KUCERA: That question has already been answered. The member for Nedlands answered her own question. Obviously, she is now starting to understand the clauses. The age of 18 was put in the Bill because we believe that juveniles and people dealt with under the Young Offenders Act are far more vulnerable and need to be directed by order into treatment regimes; that is precisely what the Young Offenders Act does. We must differentiate between an adult who has a legal responsibility and a juvenile. I do not know how many times I must state that to the member for Nedlands. That is the clear answer and I believe that every other member in the House clearly understands it.

Mr P.D. Omodei interjected.

The DEPUTY SPEAKER: Member for Warren-Blackwood!

Dr J.M. WOOLLARD: Is it the minister's intention to provide to police in the regulations the power to take away the bong, or the equipment that is found, to be examined for traces of cannabis when the officer believes that someone has used the equipment to smoke cannabis? Is that the reason for the reference to 21 days after the alleged offence? Will the equipment that has been tested for traces of cannabis under the regulations be confiscated or returned?

Mr R.C. Kucera: They will be confiscated and destroyed under the provisions of the Misuse of Drugs Act.

Dr J.M. WOOLLARD: I have a copy of the Misuse of Drugs Act with me but I cannot see where it states that the equipment will be confiscated and destroyed. Is it in section 8 or section 5? Will the minister direct me to the section of the Misuse of Drugs Act that states that the equipment will be confiscated and destroyed?

Ms S.E. WALKER: I want to explore with the minister, if he is capable of answering, the meaning in the clause of the words "A police officer, other than a police officer who is an authorised person". To me, that means an authorised person is a police officer.

Mr J.C. Kobelke: This was answered about half an hour ago.

Ms S.E. WALKER: The member for Nollamara is not the Minister for Health.

The DEPUTY SPEAKER: I call to order for the first time the member for Nedlands.

Ms S.E. WALKER: I am speaking to the minister.

The DEPUTY SPEAKER: Is the member canvassing my ruling?

Ms S.E. WALKER: I am speaking to the minister now, Madam Deputy Speaker. I am not canvassing your ruling.

The DEPUTY SPEAKER: The member should speak through the Chair and do so in an appropriate way under the standing orders of the House.

Ms S.E. WALKER: I am sorry. Do you, Madam Deputy Speaker, wish me to address the minister?

The DEPUTY SPEAKER: Yes, through the Chair.

Ms S.E. WALKER: I am happy to do that. How would you like me to do that, Madam Deputy Speaker?

The DEPUTY SPEAKER: In the appropriate way under the standing orders.

Ms S.E. WALKER: What is that? I thought I had been doing that all along in this place.

The DEPUTY SPEAKER: Is the member canvassing my ruling?

Ms S.E. WALKER: No, I am asking you for guidance, Madam Deputy Speaker.

The DEPUTY SPEAKER: I just gave it. I suggest that the member follow it.

*Point of Order*

Dr J.M. WOOLLARD: Madam Deputy Speaker, normally when one speaks to a minister, one says, "Through you, Madam Deputy Speaker", and puts the question to the minister. I believe that is the correct way. My point of order was to clarify that point.

The DEPUTY SPEAKER: The member is quite correct; there is no point of order. Let us continue. The member for Nedlands has the call.

Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
Deputy Speaker

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*Debate Resumed*

Ms S.E. WALKER: I apologise if all the time I have been in this place I have not addressed the Chair in the way I should have. I have been mistaken all this time. Through you, Madam Deputy Speaker, I ask the minister, if he is capable of answering, whether the words “A police officer, other than a police officer who is an authorised person” mean that an authorised person is someone other than a police officer.

Mr R.C. Kucera: I have answered that.

Ms S.E. WALKER: I was not in the Chamber, obviously.

Mr J.C. Kobelke: You should have been. We don’t repeat everything because you are not here.

Ms S.E. WALKER: I would like to know the answer.

Mr J.C. Kobelke: Read *Hansard*.

Ms S.E. WALKER: Why does the minister not answer it?

Mr J.C. Kobelke: It has been answered.

Ms S.E. WALKER: Will the minister tell me the answer? This is important. Who is an authorised person if not a police officer? The clause refers to “a police officer, other than a police officer who is an authorised person”. However, in clause 4 the definition of “authorised person” is a person appointed by the Commissioner of Police. That is important because clause 5 refers to “an authorised person for the purposes of section 8(4)(b)(i), 10(1) or 11(1)”. That authorised person will have very strong powers. That authorised person will have the power under clause 11 to withdraw a cannabis infringement notice.

Mr R.C. Kucera: The authorised person is the person who has the power to receive moneys, extend time and withdraw a CIN. That is why an authorised person cannot be the person who issues a cannabis infringement notice. As I said to the member for Kingsley, it is standard practice for fine enforcement.

Ms S.E. WALKER: Does that mean that an authorised person need not be a police officer?

Mr R.C. Kucera: It must be a person authorised by the Commissioner of Police.

Ms S.E. WALKER: I will allow the minister to interject on me.

Mr R.C. Kucera: Thank you.

Ms S.E. WALKER: The clause appears to indicate that a police officer is an authorised person. However, a police officer can issue a cannabis infringement notice but a non-police officer - anybody who is authorised by the commissioner - can withdraw it. The penalty is getting softer as we go. The only point I wanted to make, Madam Deputy Speaker, was that anybody could withdraw the CIN.

Dr J.M. WOOLLARD: Earlier, the minister said that under clause 5 any equipment taken away from an adult - that is, a legally responsible person over the age of 18 years - will be confiscated and destroyed. Madam Deputy Speaker, through you, I ask the minister what clause in the Bill or section in the Misuse of Drugs Act sanctions the removal, confiscation and destruction of equipment by a police officer?

Mr R.C. KUCERA: Madam Deputy Speaker, for someone who is not used to dealing with this kind of legislation, the member for Alfred Cove has asked a good question. Clause 3 of the Bill states that the Bill is to be read in conjunction with the Misuse of Drugs Act 1981. Section 28 of that Act gives the police the power to seize, dispose of, retain or forfeit anything they encounter as a result of their actions under the provisions of the legislation. Therefore, the Bill and the Act are linked, and clause 3 of the Bill is to be read in conjunction with the Act. Section 28 of the Misuse of Drugs Act gives the police the power to dispose of or forfeit that kind of material.

Ms S.E. WALKER: How will the police have reason to believe that a person has reached the age of 18 years? How do they do that? Do they ask the person for a drivers licence? Is that how it is normally done under other provisions? How does a police officer ascertain the age of a person?

Mr R.C. KUCERA: Some people may live in a vacuum. It will be done in exactly the same way as it is now. They ask people their age, and then they verify it.

Mrs C.L. EDWARDES: We may be lawyers, and we may have been in court, but we certainly have not been police officers. Therefore, we may not understand all the standard operating procedures as well as the minister does. While some of our questions may seem a little naive to the minister, they are genuine attempts to understand the operation of the clauses.



Mrs Cheryl Edwardes; Mr Bob Kucera; Ms Katie Hodson-Thomas; Mrs C.L. Edwardes;; Mr Bernie Masters; Mr Matt Birney; Ms Sue Walker; Speaker; Acting Speaker; Mr John Kobelke; Mr Colin Barnett; Dr Janet Woollard;  
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Mr J.N. Hyde: You have been here 10 years and you have dealt with this kind of legislation before.

Mrs C.L. EDWARDES: I have not been a police officer, however.

Mr R.C. Kucera: It is a good point and I thank the member for her advice. As a former Attorney General, she would be aware of the Criminal Investigation (Identifying People) Act 2002. As a member in this House she would be aware of its passage through the House. That Act lays out quite clearly the procedures for asking somebody for his or her personal details, and establishing the name, date of birth, place of residence etc. It is as simple as that. That Act was put into place to be very precise about those issues.

Mrs C.L. EDWARDES: That is a valuable answer, which should have been given at an earlier stage. As the minister may recall, I did not ask the question; it was asked by another member who may not have been as aware of that legislation as I am. As such, it is very important that all members of this House have a full understanding of the operation of very important legislation.

I will bring the minister back to a question I have explored with him previously, about an officer other than a police officer. I talked about the issue of Menzies, and Perth. The member for Nedlands just raised the issue that, other than an authorised police officer, it may have been a civilian. I want to clarify that. As I understand it, that is not the case.

Mr R.C. Kucera: Correct.

Mrs C.L. EDWARDES: The other person, who collects money, extends the period of 28 days, or can withdraw a cannabis infringement notice must be a police officer, and that is currently the system?

Mr R.C. KUCERA: No, it is not. For instance, the receipt of moneys can be carried out nowadays through Australia Post, as I understand it. The person in receipt of moneys can be an authorised person who is not a police officer. However, the extension of time and withdrawal can only be done by a police officer.

Mr B.K. MASTERS: I refer the minister to subclause (2), which provides that a CIN may be issued under subclause (1) only if the alleged offence involves only cannabis. Under clause 5, the alleged offence must relate to the simple offence of possessing pipes or utensils. Those pipes and other utensils can be used for a range of drugs, as I understand it. Can the minister outline the situation under which subclause (2) might come into play? Is this to be interpreted in absolute black and white, meaning that if there is any indication of any other illegal drug being used with those pipes or other utensils, there is to be no leeway on the part of the officer? Is there some capacity for the officer to say that the involvement of the other drug would still allow him to give a warning or some other discretionary action? Is subclause (2) to be applied absolutely to the line?

Mr R.C. Kucera: The simple answer is yes. It will be applied absolutely. It does not relate to any drug other than cannabis. It certainly does not relate to parsley.

Mr B.K. MASTERS: I note that in the explanatory notes there is a reference to prohibited drugs or prohibited plants. That prompts me to ask the question about glue or petrol sniffing. I am not sure whether the substances involved in glue or petrol sniffing have been defined under the Misuse of Drugs Act as prohibited drugs. Is there any intention on the part of the Government for subclause (2) to be applied where a person is both smoking marijuana or otherwise using cannabis, and mixing that with the use of glue or other inhalants? Can the minister provide a bit of background to whether glue or petrol sniffing is classified under the Misuse of Drugs Act, and how it would apply?

Mr R.C. Kucera: The simple answer is no. We are talking about cannabis and the Cannabis Control Bill. There is no provision for the other issues the member for Vasse was talking about. Those substances also pose a difficult issue, and there has been much debate in the community. At present, those issues are being treated essentially as a health issue, rather than a criminal issue.

Mr B.K. MASTERS: As the Minister for the Environment and Heritage is well aware at the moment, many people in the community are talking about the cumulative impact of substances other than natural substances upon them. The Minister for the Environment and Heritage will know that, in relation to the Brookdale liquid waste treatment facility and the Alcoa refinery at Wagerup, people were talking about multiple chemical sensitivities. In relation to clause 5(2), there may be a lot of concern about young people 18 years and over who are using cannabis along with sniffing inhalants. One or the other by itself may not be seen as a particularly significant issue, but the two combined should be sounding a very loud alarm bell to the wider community that there is a bigger problem for young people.

Mr R.C. Kucera: The health messages are designed to deal with those licit substances the member is talking about, such as glue. The Cannabis Control Bill deals with cannabis, which would be used in those implements.

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If any other kind of drug dealt with under the Misuse of Drugs Act were present, that would take precedence, and a CIN would not be issued. The person would be charged.

Mr B.K. MASTERS: I am trying to alert the minister to a problem in the Aboriginal community. I will raise the issue of Aboriginal use of marijuana when the time is appropriate later on. It is a genuine issue, and I was only trying to flag it for him.

Ms S.E. WALKER: Clause 5 has a discretionary “may” in relation to the police officer giving a cannabis infringement notice. Will it be a matter of policy, or a directive by the minister to the police, that the police will give an infringement notice where they can?

Mr R.C. KUCERA: The ordinary procedure would be that where circumstances dictate, and an infringement notice can be issued, that notice would be issued. Any policy issues and directives would be the province of the Commissioner of Police, not the minister.

Debate interrupted, pursuant to standing orders.

[Continued on page 6848.]