

CANNABIS CONTROL BILL 2003

Introduction and First Reading

Bill introduced, on motion by Mr R.C. Kucera (Minister for Health), and read a first time.

Second Reading

MR R.C. KUCERA (Yokine - Minister for Health) [10.30 am]: I move -

That the Bill be now read a second time.

The Labor Party went to the 2001 state election with a commitment to host a Community Drug Summit, which it did in August 2001. The purpose of the summit was to enable the wealth of experience, knowledge and wisdom of the community to contribute to the formulation of long-term and strategic policies to address the problem of unlawful drug use in Western Australia. Recognising the adverse consequences of cannabis use for society, families and individuals, it was the clear consensus of that summit that cannabis cultivation, possession and use should remain unlawful in Western Australia. Almost three-quarters - 72 per cent - of summit delegates supported the idea that the law should be changed to enable the continuing prohibition on cannabis cultivation, possession and use to be enforced by the imposition of civil penalties under an infringement notice scheme. In response, the Government established the Working Party on Drug Law Reform under the chairmanship of Mr John Prior, a respected criminal lawyer, and with representation from the Western Australia Police Service, the Drug and Alcohol Office and the Department of Justice. The working party also contained a general medical practitioner and people with research expertise on illegal drug use. The working party was tasked with developing proposals for drug law reform consistent with the summit's recommendations. The working party reported in March 2002 with proposals for a cannabis infringement notice scheme, including recommendations for cultivation and possession limits, modified penalties and a range of related matters.

Mr C.J. Barnett interjected.

Mr R.C. KUCERA: The group's report, "Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters", was released in May 2002.

Mr C.J. Barnett interjected.

Mr R.C. KUCERA: The Government indicated that it supported the majority of the working party's recommendations. The release of the report and the Government's response contributed to further community debate on this important issue.

The Cannabis Control Bill 2003 implements the law reforms advocated by the Community Drug Summit, developed in detail by the Working Party on Drug Law Reform and supported by government.

Mr C.J. Barnett interjected.

Point of Order

Mr M. McGOWAN: It is traditional for second reading speeches to be heard in silence.

Mr R.F. Johnson: You always interjected on ours.

Mr M. McGOWAN: Second reading speeches are often used to interpret the meaning of the legislation. If people interject during those speeches, the speaker can be disrupted and may well respond. That in turn confuses the meaning of the speech the member is giving. For that reason it is a tradition of this place that the standing order that all interjections are disorderly is enforced quite strictly.

Mr C.J. Barnett: Are you standing up for the drug dealers?

The ACTING SPEAKER (Mr A.P. O'Gorman): Under our standing orders all interjections are disorderly. I ask members to try to keep the interjections to a minimum so that we can get through the speech and that it is heard as clearly as possible.

Debate Resumed

Mr R.C. KUCERA: The Cannabis Control Bill 2003 implements the law reforms advocated by the Community Drug Summit, developed in detail by the Working Party on Drug Law Reform and supported by government. Consistent with the consensus view of the Community Drug Summit, cannabis will remain a prohibited drug under this Bill. Its cultivation and possession in any quantity will continue to be unlawful and subject to penalties.

Mr C.J. Barnett: Like a parking fine.

Mr R.C. KUCERA: The core reform proposed in the Bill is to provide the police with the discretion to issue an infringement notice in a situation in which a person is reasonably believed to be cultivating -

Several members interjected.

The ACTING SPEAKER: Order, member for Kalgoorlie and Leader of the Opposition!

Mr R.C. KUCERA: Mr Acting Speaker -

Several members interjected.

The ACTING SPEAKER: We are clearly not getting any further along with the speech as a result of the interjections. I once again ask that we try to keep them to a minimum. Normally it is only the opposition spokesperson on the issue -

Mr C.J. Barnett: That is me.

The ACTING SPEAKER: If the Leader of the Opposition is that person, I ask the member for Kalgoorlie to withhold his interjections.

Mr R.C. KUCERA: I repeat: consistent with the consensus view of the Community Drug Summit, cannabis will remain a prohibited drug under this Bill. Its cultivation and possession in any quantity will remain unlawful and subject to penalties. The core reform proposed by the Bill is to provide the police with the discretion to issue an infringement notice in a situation in which a person is reasonably believed to be cultivating, possessing or using cannabis within the limits of the cannabis infringement notice scheme determined by the Bill. In other words, similar to every other infringement notice scheme in Western Australia, the Bill will establish an alternative method of punishing certain simple offences in defined circumstances. The obvious parallel is with traffic infringement notices that may be issued for certain Road Traffic Act offences, notably speeding offences. Infringement notice schemes are now an integral part of the criminal law and its enforcement. They are a valid and appropriate means of achieving the expeditious punishment of simple offences in a range of circumstances. Typically, infringement notice schemes offer alleged offenders the option of paying a modified penalty to expiate the offence or having the matter dealt with by a court. The cannabis infringement notice scheme in this Bill follows that model with the important distinction that alleged offenders will be provided with a further option of participating in a cannabis education session. That will be an alternative to paying a modified penalty or having proceedings for an alleged offence commenced in court. That element of the proposed scheme builds on the Western Australian cannabis cautioning scheme that was piloted in the Bunbury and Mirrabooka police districts in 1998 and 1999 and extended across the State in March 2000. The cautioning scheme incorporates mandatory education for personal-use cannabis offences.

In proposing this Bill, the Government does not condone or wish to in any way encourage cannabis.

Mr C.J. Barnett: That is exactly what you are doing.

Mr R.C. KUCERA: There is clear scientific -

The ACTING SPEAKER: Leader of the Opposition!

Mr C.J. Barnett: Already young kids are saying that cannabis is okay because Dr Gallop says it is all right. That is what is happening in schools today. That is the most critical issue for young parents in this State.

The ACTING SPEAKER: The Leader of the Opposition, is interrupting the debate completely. He is not ceasing his interjections even when I am on my feet. If he continues, I will have to name him.

Mr R.C. KUCERA: In the words of Sir William Osler, the greater the ignorance, the greater the dogmatism.

In proposing this Bill, the Government does not condone or wish to in any way -

Mr C.J. Barnett: You are supporting crooks and drug addicts.

Mr R.C. KUCERA: I repeat: in proposing this Bill, the Government does not condone or wish to in any way encourage cannabis use. There is clear scientific evidence that cannabis use is associated with the risk of significant harm to a user's mental and physical health and wellbeing. These risks clearly indicate to the Government that cannabis use must remain unlawful.

Mr C.J. Barnett: Like a parking ticket.

Mr R.C. KUCERA: In essence, the Bill continues this prohibition but proposes an alternative and additional method of control.

The Government will complement the continuing legal intolerance of cannabis use by providing the community with information about the risks of cannabis use and the laws that apply to it -

Mr C.J. Barnett: Soft on drugs.

Mr J.N. Hyde: Tough on crime.

The ACTING SPEAKER (Mr A.P. O’Gorman): I call the Leader of the Opposition to order. We are still not getting through this second reading speech. I formally warn you.

Mr R.C. KUCERA: I repeat: the Government will complement the continuing legal intolerance of cannabis use by providing the community with information about the risks of cannabis use and the laws that apply to it and providing treatment to those who do use the drug. It is evident that the threat of criminal prosecution has not deterred many young Western Australians in particular from using cannabis. As a consequence, large numbers of Western Australians who on the whole are otherwise law-abiding are exposed to the possibility of criminal prosecution for minor cannabis offences. A conviction for a drug-related offence - even a minor one - can have disproportionate social and economic impacts for the individual by, for example, affecting employment and travel opportunities.

Another demonstrable and undesirable consequence of a conviction for a minor cannabis offence is the increased likelihood of the offender having subsequent contact with the law. Moreover, the prosecution of minor cannabis offences is costly in terms of both police and court time. Law enforcement and the criminal justice system should target and heavily penalise those connected or involved in the business of large-scale cannabis supply, those who also supply other prohibited drugs, and those engaging in violence or standover tactics.

For these underlying reasons, the Government supports the view taken by the Community Drug Summit that enforcement of the prohibition on personal cannabis use should incorporate a cannabis infringement notice scheme allowing for the imposition of civil penalties as an alternative to criminal prosecution in defined circumstances. Those who use small amounts of cannabis will be penalised with a substantial fine.

Mr C.J. Barnett: Rubbish! It will never happen, and you know it.

Mr R.C. KUCERA: I repeat: those who use small amounts of cannabis will be penalised with a substantial fine.

Mr C.J. Barnett: And I repeat: rubbish! It will never happen, and you know it.

Mr R.C. KUCERA: The police will retain the discretion to bring criminal charges to bear on anyone who is flouting the intention of the scheme, irrespective of the amount of cannabis involved. We will enhance the opportunity to divert people into the treatment system. We will vigorously pursue those who produce and supply cannabis -

Mr C.J. Barnett: Two plants in every backyard!

Mr R.C. KUCERA: I repeat -

Mr J.N. Hyde: You had the Liberal’s Mirrabooka scheme.

The ACTING SPEAKER: Members!

Mr C.J. Barnett: The Liberal Party never backed cultivation in any form, and you know it.

Mr M.J. Birney: Everyone gets a free bag of manure.

The ACTING SPEAKER: Member for Kalgoorlie!

Mr R.C. KUCERA: I repeat: we will vigorously pursue those who produce and supply cannabis, and will lower the number of plants at which the presumption of intention to sell or supply cannabis arises.

The evidence indicates that such an approach will not contribute to increased cannabis use. The Government will continue to monitor the prevalence of cannabis use in Western Australia in comparison with other Australian jurisdictions that do and do not have cannabis infringement notice schemes to evaluate this key issue. More positively, the Government proposes 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;

- the success of public education campaigns and cannabis education sessions in raising awareness of the continuing prohibition on cannabis use and the harms associated with cannabis use;

- preventing the inappropriate imposition of significant and disproportionate social and economic costs resulting from a conviction for a minor cannabis offence; and

- reducing the costs to the police and the court system of enforcing minor cannabis offences, and allowing more active pursuit of those who commercially grow and supply cannabis.

I will now outline the main provisions of the Bill.

Cannabis infringement notices - clauses 5, 6 and 7 are the key provisions. These clauses allow police officers to issue a cannabis infringement notice, or CIN, to persons aged 18 years and over who are believed to have committed the offences at section 5(1)(d)(i), 6(2) or 7(2) of the Misuse of Drugs Act 1981 where the offences involve cannabis. Young people are excluded from the CIN scheme. There are adequate processes to respond to young people through juvenile justice teams. The discretionary nature of this power is emphasised. The police will retain the option of charging an alleged offender found cultivating or in possession of cannabis within limits set from the CIN scheme.

Mr M.J. Birney: Whom do they charge and whom do they not charge?

The ACTING SPEAKER: Member for Kalgoorlie!

Mr M.J. Birney: Don't you think that corruption will creep in?

The ACTING SPEAKER: Member for Kalgoorlie! I have already reminded the member that interjections are unparliamentary. I realise that this is a rather contentious Bill, but he will have plenty of opportunity to speak during the second reading debate and the consideration in detail stage. I ask him, therefore, to please let the minister get through his second reading speech.

Mr R.C. KUCERA: Thank you, Mr Acting Speaker.

Mr C.J. Barnett: It is a disgrace. There is cheering in the suburbs. Grow cannabis and get a parking fine!

The ACTING SPEAKER: Leader of the Opposition!

Mr R.C. KUCERA: I repeat: the greater the ignorance the greater the dogmatism.

I also repeat: the discretionary nature of this power is emphasised. The police will retain the option of charging an alleged offender found cultivating or in possession of cannabis within limits set from the CIN scheme. This is to ensure that the police can deal with people who may seek to exploit the scheme by, for example, possessing small amounts of cannabis for sale or supply to another person.

Limits for the CIN scheme are defined by the Bill. Outside these limits, cultivation, possession or use of cannabis will remain subject to criminal prosecution. Police officers will be able to issue a CIN under clause 5 in respect of the possession of a smoking implement if cannabis is involved, and under clause 6 if an alleged offender possesses not more than 30 grams of cannabis. It will not be possible to issue a CIN under this clause to a person found in possession of cannabis resin, or any other cannabis derivative such as cannabis oil. Cannabis in these more potent forms is excluded from the CIN scheme. Similarly, police officers will be able to issue a CIN under clause 7 of the Bill in respect of plants if not more than two cannabis plants are found on the same premises. The Bill prevents police officers issuing a CIN under clause 7 where cannabis is being grown hydroponically. This exclusion recognises the greater yields of hydroponically grown cannabis. Hydroponic cultivation in this context is intended to have its ordinary meaning; that is, cultivation by placing the roots of the plant in a liquid nutrient solution rather than in soil.

The cultivation and possession limits for the CIN scheme contained in clauses 6 and 7 of the Bill are those recommended by the Working Party on Drug Law Reform. These limits are towards the lower end of the limits that apply in infringement schemes of this kind that apply in other jurisdictions. The Bill also enables these limits to be reduced, but not increased, by regulation. Persons to whom a CIN is issued will have the option of paying a modified penalty, attending a cannabis education session or having a complaint in respect of the alleged offence heard in court. The Bill enables modified penalties to be prescribed by regulation subject to a maximum of \$400. The modified penalty in respect of a CIN issued under clause 5 is proposed to be \$100. The modified penalties in respect of a CIN issued under clauses 6 or 7 are proposed to be those recommended by the Working Party on Drug Law Reform; namely, \$100 for possessing not more than 15 grams of cannabis; \$150 for possessing between 15 grams and 30 grams of cannabis; and \$200 for possessing up to two cannabis plants.

Several members interjected.

The ACTING SPEAKER (Mr A.P. O'Gorman): Order! The Leader of the Opposition! I have been pretty tolerant of the member for Kalgoorlie, but I now formally warn him. I have asked him to desist from interjecting, so I have now formally warned him for the first time. The minister has the call.

Mr R.C. KUCERA: Part 3 of the Bill proposes to apply controls to businesses that sell cannabis smoking paraphernalia. These controls include requirements to display warning notices and to make educational materials available to the purchasers of such items. The sale of cannabis smoking paraphernalia to persons who have not attained the age of 18 years is also to be prohibited. Part 5 of the Bill proposes a number of changes to the Misuse of Drugs Act 1981. Clause 27 proposes to amend section 5(1)(e) of that Act, such that it will no

longer be an offence to be found in a place where cannabis is being smoked. A new indictable offence, however, is proposed in relation to the sale and supply of equipment where it is reasonably known that the equipment will be used in the hydroponic cultivation of cannabis and other prohibited plants. The Government does not believe that the cannabis infringement notice scheme - incorporating a low plant threshold limit; retaining police discretion to prosecute, even under the expiable limits; and excluding hydroponically grown cannabis - will create a new incentive for organised criminal involvement in hydroponic cannabis cultivation, as is alleged to have occurred in South Australia. However, the Government believes it is prudent to strengthen the law to deter the creation of a nexus between hydroponic equipment supply and criminally orchestrated cannabis cultivation in Western Australia. The new offence will have no impact on businesses engaged in the sale or supply of hydroponic equipment for purposes of legitimate plant cultivation. The final proposed amendment to the Misuse of Drugs Act is to reduce from 25 to 10 cannabis plants the threshold at which it is presumed, for the purposes of criminal prosecution, that a person had an intent to sell or supply cannabis to another person.

In conclusion, this Government has adopted a number of strategies to reduce drug related problems in the Western Australian community. The Cannabis Control Bill 2003 is part of a multifaceted strategy to respond to cannabis use, and it is consistent with the recommendations of the Community Drug Summit. The Government will ensure that the community is informed about the risk of cannabis use. Cannabis use will remain unlawful. The community will be informed that cannabis use remains unlawful. Those found in possession of any amount of cannabis will be penalised, whether by infringement notice or criminal prosecution. Those who supply cannabis will be vigorously pursued and prosecuted. The Government will monitor the impact of all these initiatives. This approach is based on the best available evidence and expert opinion and is consistent with the views expressed in our consultation with the community through the Community Drug Summit. The message we will convey is that cannabis use is harmful and unlawful. Using cannabis will result in severe penalties, and cannabis supply will result in severe criminal sanctions.

Mr C.J. Barnett: This Bill will destroy young lives.

The ACTING SPEAKER: The Leader of the Opposition!

Mr R.C. KUCERA: As I have said, the greater the ignorance, the greater the dogmatism.

The Bill provides for the implementation of a strategy that is evidence based, clear, firm and compassionate. I commend the Bill to the House.

Debate adjourned, on motion by Mr J.L. Bradshaw.