

**CANNABIS CONTROL BILL 2003**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Sue Ellery (Parliamentary Secretary) in charge of the Bill.

**Clause 6: CIN for offence under *Misuse of Drugs Act 1981* s. 6(2) -**

Progress was reported after the clause had been partly considered.

Hon SIMON O'BRIEN: Before the dinner break, we were contemplating clause 6, which is, as much as any clause, the integral part of the policy that the Government is trying to implement in this Bill. I was canvassing one of the key arguments that the Government has put forward; that is, it will save police and court resources. Other matters have already been debated. I was exploring with the parliamentary secretary what data the Government wished to put forward to back up the claim that has been oft repeated, particularly by the Premier, that it will save police resources. If this becomes law and is implemented, we will find out. However, when considering the matter in detail, the Chamber should not have to fly blind on this. I have asked some questions and received the answers that I have received. The answers that I have received were based more on hope than experience and were quite imprecise.

Before we move on, and we must move on, I want to give two examples from here and from another jurisdiction of the sorts of "savings" in police resources that can be expected. I indicated before the break that I would refer to a jurisdiction that also has decided not to waste police time unnecessarily on minor cannabis offences because it wants to get on and deal with serious crime. I offered some arguments during the second reading debate for why that is a contrary argument and I will not revisit that. The jurisdiction I am referring to is the police district of Lambeth in South London, which, members will be aware, I visited in January this year because I wanted to find out what happens. I was very well received there. I was met by the new head of the drugs directorate at the Metropolitan Police Service, Deputy Assistant Commissioner Michael Fuller. DAC Fuller is the first person of that rank to occupy a specific drugs directorate and he was quite frank and helpful in the way he presented information to me about this matter. Something of a public relations disaster was going on in that place at the time, which I have alluded to on other occasions. However, what is relevant now is the data that was produced. Briefly, members can find this material in a publication called "Updated Drug Strategy 2002: Tackling drugs" published by the Home Office Drugs Strategy Directorate. At page 32 it refers to the Lambeth cannabis warning pilot scheme. It says that police time was saved because the people at the Home Office who have to put this out want to put a positive spin on things; they are no different from Governments elsewhere. It states -

The scheme saw a 110% increase in the number of interventions for cannabis possession with a total of 1390 warnings given, in contrast to the 661 arrests in the preceding year.

There were 661 arrests in the previous year for cannabis offences of the type we are talking about and under the new policy of effectively not doing anything about it except issuing an informal warning, 1 390 warnings were given. I do not know what those figures on their own represent, but it is said that each of those warnings resulted in a time saving of three hours. The fact is that they did not. What was saved were 661 arrests, which were not made, and there are other consequences. If each of those 661 arrests required three hours of processing - that is the figure given in the report - it gives a total figure for that police district of 661 times three hours, which comes to 1 983 hours. That is the saving. It works out at 1.4 officer or full-time equivalent years - that is all. Commander Brian Paddick joined Mr Fuller and me for our meeting. Commander Paddick had been the recent commander in Lambeth at the time of the implementation of this policy. I asked him about the size of the police district and how many people we were talking about. Basically there are about 1 000 police officers in that police district, so it is a reasonable size. I believe the population of the district is somewhere in the order of 450 000 people. The saving of 1.4 in 1 000 officers is virtually nothing - absolutely nothing. To put it another way, I do not know the percentage of officers in Western Australia who are involved in picking up people for cannabis offences, but let us say that in Lambeth, out of 1 000 officers, 661 might be on the beat; it would mean one per year. Therefore, there would be a saving of three hours a year for each beat officer. The average policeman would spend more time than that in a year reading the paper, going to the loo, hopping into a shop to buy a chocolate bar and that sort of thing. The effect of those so-called savings is absolutely negligible.

Let us look at this Government's attitude to see whether what it is proposing here also stacks up. I was most concerned to note in the budget this year just what this Government's real priority is, because according to page 691 of the budget papers, under the third output on traffic management and road safety, in 2001-02 the amount of time spent on traffic management and road safety was 1.593 million hours actual. In 2002-03 it was budgeted at 1.530 million hours, which represents a decline of 63 000 hours. However, what was actually achieved was

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1.488 million hours, which is a decline of 105 000 police man-hours under this Government. In a big place like the police district of Lambeth with an open slather approach to minor cannabis offences, which means basically turning a blind eye to them, the saving is 1 983 hours. Page 691 of the budget papers shows that this Government is quite happy to budget for 105 000 police hours not to be spent on traffic management. There are clearly a lot of police man-hours floating around that are presumably available to be spent on catching the Mr Bigs without resorting to this sort of policy which will not produce any net saving in time. These papers are here if anyone wishes to look at them.

This shows the way in which this Government has tried to make the facts fit what it wants to do rather than develop a policy to meet the needs of the community. When that is done, it is suddenly found that attempts to hopefully find data to support the proposition turn out to find the sort of data that does not stand up to scrutiny. However, the Government will wish to continue to delude itself. It has the Greens (WA) to support it. Without further ado we might as well let democracy take its course and put clause 6 to a vote, and on the Government's head be it.

Hon SUE ELLERY: For the purposes of the historical record it needs to be noted that the system in Lambeth in the United Kingdom is totally different from that which we are talking about here; the United Kingdom system involves informal cautioning with no penalty. This Government would not support an approach like that.

Clause put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon Jon Ford	Hon Jim Scott	Hon Ed Dermer ( <i>Teller</i> )
Hon Robin Chapple	Hon Graham Giffard	Hon Christine Sharp	
Hon Kate Doust	Hon Nick Griffiths	Hon Ken Travers	
Hon Sue Ellery	Hon Dee Margetts	Hon Giz Watson	

Noes (11)

Hon Alan Cadby	Hon Ray Halligan	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Murray Criddle	Hon Barry House	Hon Barbara Scott	Hon Bruce Donaldson ( <i>Teller</i> )
Hon Paddy Embry	Hon Robyn McSweeney	Hon Bill Stretch	

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Pairs

Hon Tom Stephens	Hon John Fischer
Hon Louise Pratt	Hon Peter Foss
Hon Adele Farina	Hon George Cash
Hon Ljiljana Ravlich	Hon Norman Moore

**Clause thus passed.**

**Clause 7: CIN for offence under *Misuse of Drugs Act 1981* s. 7(2) -**

Hon SUE ELLERY: There are two amendments to clause 7 in my name. I move -

Page 4, line 25 - To insert after "premises" -

and those premises are the alleged offender's principal place of residence.

This amendment clarifies that an infringement notice may be issued only if the cannabis has been grown at the alleged offender's principal place of residence and no other cannabis plants are being grown on the same premises by another person. This is consistent with the intent of the infringement scheme and makes it clearer that a person cannot be dealt with by issuing an infringement notice if the person is cultivating cannabis plants at premises other than his own.

Hon SIMON O'BRIEN: The Opposition will support the amendment and oppose the subsequent amendment. Clause 7 deals with cannabis infringement notices to be issued for offences allegedly committed under section 7(2) of the Misuse of Drugs Act 1981, which basically involves simple possession or cultivation of a prohibited plant being a cannabis plant. As will be seen shortly, the Opposition takes particular exception to the lenient way the Government proposes to treat this offence in future. However, we will leave that to one side for the moment.

The amendment makes a bad situation at least more workable. I am sure that when this was considered in other fora and all sorts of problems were raised by government critics, they were brushed aside with the same calm

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assurance that concerns raised in this place about other matters were brushed aside. However, to give credit where it is due, the Government has at least decided to take on board some suggested amendments to address the undoubted deficiencies in clause 7. Without these amendments, the ludicrous situation could arise in which someone could grow plants under a CIN enforcement regime in a place other than his home, which would defeat even the Government's stated intent. The Opposition supports that. I will be interested in the Greens' comments.

More important, the second part of the amendment seeks to ensure that several CINs cannot be issued for a plethora of plants cultivated at one premise that belongs to sundry owners. Those matters have been raised in debate elsewhere and during debate on the second reading of the Bill. The Opposition supports the amendments with the qualification that it is not happy with the overall regime.

Hon DERRICK TOMLINSON: I am interested to hear the parliamentary secretary's explanation of what is a principal place of residence. During the second reading debate I raised the possibility of students living at a university residence, each of whom could have two plants in pots.

Hon Robyn McSweeney interjected.

Hon DERRICK TOMLINSON: Of course they would not. If 100 aged persons who each had two plants in pots were residents of the Bullamakanka aged persons home, that would be clearly their principal place of residence. Let us suppose 100 residents of Tommy Moore college, who stay there for 40 weeks of the year, claimed to each own two pot plants. Is their principal place of residence Tommy Moore college?

Hon Barbara Scott interjected.

Hon DERRICK TOMLINSON: I do not want it confused with St Thomas Moore. I am quite deliberately calling it Tommy Moore so that it has some anonymity. For 40 weeks of the year they would be staying at Tommy Moore college while they were assiduously studying. For six weeks of the year they would be engaged in Christmas occupations to buy their cosmetics and so on and for six weeks of the year they would be living with their parents. Their parents' residences might be at Koolyanobbing, Boyup Brook, Rivervale or Rockingham. Is the principal place of residence the home address of the parents or the place at which they spend 40 weeks while they go to college? I would like to hear the minister - I mean the parliamentary secretary; I am sorry for promoting her so quickly.

Hon Sue Ellery: Go ahead.

Hon DERRICK TOMLINSON: I encourage such a promotion. She would do a very good job as Minister for Local Government. Neither residence nor premises is defined in the Criminal Code or the Misuse of Drugs Act. As the Bill now refers to a principal place of residence, will the parliamentary secretary explain what it is? The problem the parliamentary secretary is trying to get around is the multiple occupancy of a building that has multiple residences, each with the permissible two pot plants.

Hon SUE ELLERY: The advice at the Table is that the matter is debatable, and it is likely to be interpreted in the following way: exclusive occupation of one part of a building, for example, is likely to be treated as one premise, but if there were shared occupancy of a common building, it is likely that only one person would be dealt with under the infringement scheme. The police will have to take into account the circumstances at the time to make a decision about whether or not they are in a position to exercise their discretion.

Hon DERRICK TOMLINSON: I am so pleased that once more we are relying upon the infallible discretion of Constable Plod. I will take the parliamentary secretary's situation of multiple occupancy of a single residence and apply it to the building next door to my house occupied by three students - multiple occupants of a single residence. If that single residence were occupied by one occupant, two pot plants would be permissible. The three occupants, who share the residence by agreement - they each pay a fair proportion of the rent, the rates, the outgoings and the cost of living - can have six pot plants in their house. A building with 100 residents can have 200 pot plants - a veritable plantation. I suggest we might even have an industry there.

Hon Simon O'Brien: A green's paradise.

Hon DERRICK TOMLINSON: I do not know whose paradise it might be.

Hon Bill Stretch interjected.

Hon DERRICK TOMLINSON: A happy haven is a home for the aged. While it may sound as though I am being disparaging, I have a great deal of confidence in police discretion, but the law for which we are responsible does not contain the answer, therefore it will be left to the police to decide. My concern is that if we do not make the legislation correct, the police discretion over an imprecise law will allow for any manner of

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interpretations. I hope the parliamentary secretary can give us a more erudite explanation of what she means by a principal place of residence.

Hon SUE ELLERY: I refer members to a letter from the Crown Solicitor's Office tabled in this place during the second reading speech of my colleague Hon Ljiljana Ravlich. It is an opinion about a number of matters in this debate. The letter is dated 28 April 2003 and it is signed by George Tannin SC, crown counsel. In particular, it addresses a question that has been raised by Hon Derrick Tomlinson, and it states -

Where the police discover *more than two* plants located on premises inhabited by several people they may not issue a CIN to *any* inhabitant they reasonably suspect of being in possession of the plants . . . .

It continues -

It would be an improper exercise of the discretion conferred on police by clause 7 of the Bill for an officer to artificially "allocate" possession of the plants among the inhabitants so that each person could be issued with a CIN.

It is also worth noting that the next amendment standing in my name on the Notice Paper further clarifies the question of residences.

Hon DERRICK TOMLINSON: May I infer from that that the multiple residents of the premises, on Mr Tannin's interpretation, are deemed the possessors of the cannabis on the property and each may be charged, tried and found guilty of the offence?

Hon SUE ELLERY: The answer is yes.

Hon CHRISTINE SHARP: I was pleased to hear the arguments of my colleague across the Chamber. He has provided good arguments for the Greens about why we should not be supporting this amendment. He has added further elements of confusion to the application of the infringement system and in this case the argument about the difficulty in determining the principal place of residence. To embellish the argument, the Greens are of the view that if persons are cannabis smokers, the best way for them to access cannabis is to grow it themselves and not access it from dealer networks. We are not philosophically in support of things that will interfere with the reality of the supply situation and will thereby add to the enormous black market in cannabis that we spoke about at some length during the second reading debate. We can imagine all sorts of hypothetical situations. For example, a person may want to grow his own pot plant but does not have his own garden. As we know, the infringement system will not apply to hydroponic cultivation, so the person may decide to grow his pot plant at his girlfriend's place or at some other location. We do not believe that should undermine the basic objective of the infringement system. That is why we will not be supporting the parliamentary secretary's amendment with regard to a principal place of residence.

Hon SIMON O'BRIEN: I thank Hon Derrick Tomlinson for his observations. The reason the Opposition will support this amendment is that the capacity of people to cultivate cannabis, and all that goes with that capacity, with relative impunity will be greatly reduced. We disagree fundamentally with the idea that the production of a prohibited plant - the cultivation of any form of cannabis - is not something to be discouraged in the community. We believe it should be actively discouraged. However, the Government is not prepared to do that, and it is seeking to put that policy into law through this Bill. This amendment will restrict the capacity of people to use this particular mechanism. It is instructive to note two things. First, the Greens do not like this amendment, for the reason just outlined by Hon Chrissy Sharp, which basically is that this part of the Bill will restrict the capacity of people to grow dope. Hon Chrissy Sharp supports all the other parts of the Bill. However, she does not support this part of the Bill. That shows where the Greens' priorities lie. The fact that the Greens and the Government disagree on this amendment says more about the content of the rest of the Bill than it does about this clause. We still oppose the principle, but we will support the amendment because it will make an otherwise very bad clause less bad.

**Amendment put and passed.**

Hon SUE ELLERY: I move -

Page 4, after line 26 - To insert -

- (c) there are no other cannabis plants being cultivated on the premises by any other person; and

This amendment is consistent with the legal advice that has been provided to us by the Crown Solicitor's Office, to which I referred in the debate on the previous amendment, that the Bill imposes a limit of two plants per premises, not two plants per person per premises. It is a helpful clarification.

**Amendment put and passed.**

Hon Simon O'Brien; Hon Sue Ellery; Hon Derrick Tomlinson; Hon Dr Chrissy Sharp; Deputy Chairman; Hon Barry House; Hon Robyn McSweeney

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Clause, as amended, put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon Jon Ford	Hon Jim Scott	Hon Ed Dermer ( <i>Teller</i> )
Hon Robin Chapple	Hon Graham Giffard	Hon Christine Sharp	
Hon Kate Doust	Hon Nick Griffiths	Hon Ken Travers	
Hon Sue Ellery	Hon Dee Margetts	Hon Giz Watson	

Noes (12)

Hon Alan Cadby	Hon Ray Halligan	Hon Robyn McSweeney	Hon Bill Stretch
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	Hon Bruce Donaldson ( <i>Teller</i> )

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Pairs

Hon Tom Stephens	Hon John Fischer
Hon Louise Pratt	Hon George Cash
Hon Adele Farina	Hon Peter Foss
Hon Ljiljana Ravlich	Hon Norman Moore

**Clause, as amended, thus passed.**

**Clause 8: Content of CIN -**

Hon SUE ELLERY: An amendment on the supplementary notice paper in my name will insert the words "unless section 9 applies". Those words relate to proposed new clause 9, which will limit the options available under the infringement scheme when a person is a repeat offender. The effect of the amendment to clause 8 is to ensure the option of dealing with infringement notices set out in the clause not to apply to the infringement notices to which proposed new clause 9 will apply. Need I move to postpone dealing with the amendment to clause 8 until clause 9 has been dealt with?

The DEPUTY CHAIRMAN: Yes.

Hon Derrick Tomlinson: Will clause 8 be dealt with between clauses 9 and 17?

The DEPUTY CHAIRMAN: We will not deal with clause 8 until we have dealt with proposed new clause 9.

Hon Derrick Tomlinson: Will clause 8 be dealt with at the end of the Bill?

The DEPUTY CHAIRMAN: Yes.

**Further consideration of the clause postponed until after the consideration of new clause 9, on motion by Hon Sue Ellery (Parliamentary Secretary).**

**Clause 9: Modified penalties -**

Hon SIMON O'BRIEN: This clause prescribes the penalty that gives some meaning to the concept of a cannabis infringement notice. I note that the modified penalty that may be prescribed by regulation is not to exceed \$400. However, as has been made clear by the Government, I understand that the proposed schedule of modified penalties is \$100 for possession of cannabis up to 15 grams, \$150 for possession up to 200 grams and \$200 for the cultivation of plants. There are a few other incidental offences that are not the principal matters concerning the Committee. I understand that the penalty for littering was recently set at \$200. Is the Government's intention to say to the community that the possession of up to 15 grams of cannabis is half as serious in the eyes of this Government as the offence of littering?

*Point of Order*

Hon BARRY HOUSE: There appears to be some confusion. Are we dealing with clause 9 or new clause 9 as appears on the supplementary notice paper?

The DEPUTY CHAIRMAN: We are dealing with clause 9, not new clause 9.

*Committee Resumed*

Hon SUE ELLERY: The Government's intention is clear: cannabis is illegal, and it will remain illegal. In certain circumstances when dealing with small amounts for personal use, the illegal status of the drug will be enforced by a different penalty regime. That regime reflects the views of the community about whether a person

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ought to receive a criminal conviction as opposed to a civil infringement notice and access to treatment when dealing with a small, defined amount of cannabis.

Hon SIMON O'BRIEN: I must congratulate the parliamentary secretary, and it is not the first time I have given credit in this debate when I felt it was due: it takes some doing to stick to her task and soldier on when she knows she is regurgitating a line that does not stand up and which nobody believes. The question I asked was neatly sidestepped. A \$200 penalty has been announced for littering. A \$100 penalty will apply to the vast majority of people found in possession of cannabis. Does the Government think that littering is twice as serious as possession of up to 15 grams of cannabis - yes or no?

Hon Derrick Tomlinson: Yes.

Hon Simon O'Brien: Evidently.

Hon SUE ELLERY: I have already answered the question.

Hon Simon O'Brien: You've avoided the question.

Hon SUE ELLERY: I have answered the question.

Hon SIMON O'BRIEN: I see no point in lingering on this clause. Hon Derrick Tomlinson may wish to comment on the next matter I raise. If a police officer approaches someone in possession of up to 15 grams of cannabis, and the person with the cannabis says, "Oh, dear, here comes a police officer - I know that this Gallop Labor Government thinks drugs are illegal, so I'd better throw this cannabis away" -

Hon Derrick Tomlinson: Littering!

Hon SIMON O'BRIEN: He chucks the stash into the bushes behind him, but our intrepid police officer -

Hon Christine Sharp: Constable Plod.

Hon SIMON O'BRIEN: I use the term Constable Ellery.

Hon Derrick Tomlinson: Come on - Senior Constable Ellery!

Several members interjected.

The DEPUTY CHAIRMAN: I am sure Hon Simon O'Brien does not require assistance.

Hon SIMON O'BRIEN: I thank you, Madam Deputy Chairman.

The stash of cannabis is thrown into the bush and our intrepid police officer sees it happen. Is that not always the way? When one wants a policeman, they are not around; when one is not wanted, they pop up most inconveniently - so I am told. The policeman, who has just transferred from the Met in Lambeth, says, "'ello, 'ello, 'ello!" Will he issue this person with a cannabis infringement notice for \$100, given that the radar and computer equipment is working, and not take him to the police station, does he give the more serious penalty of \$200, or is he charged with attempting to pervert the course of justice by disposing of the evidence? What is it? This is where Hon Derrick Tomlinson might be able to help. I have a feeling that it will come down to a matter of discretion. Can the parliamentary secretary tell me what is the offence? Is it littering, which is a \$200 fine, or possession of cannabis, which is a \$100 fine?

Hon SUE ELLERY: The police would respond to such a scenario based on the particular circumstances at the time.

Clause put and a division taken with the following result -

**Extract from Hansard**  
[COUNCIL - Tuesday, 9 September 2003]  
p10757b-10770a

Hon Simon O'Brien; Hon Sue Ellery; Hon Derrick Tomlinson; Hon Dr Chrissy Sharp; Deputy Chairman; Hon Barry House; Hon Robyn McSweeney

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Ayes (13)

Hon Kim Chance	Hon Adele Farina	Hon Jim Scott	Hon Ed Dermer ( <i>Teller</i> )
Hon Robin Chapple	Hon Jon Ford	Hon Christine Sharp	
Hon Kate Doust	Hon Graham Giffard	Hon Ken Travers	
Hon Sue Ellery	Hon Dee Margetts	Hon Giz Watson	

Noes (12)

Hon Alan Cadby	Hon Ray Halligan	Hon Robyn McSweeney	Hon Bill Stretch
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	Hon Bruce Donaldson ( <i>Teller</i> )

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Pairs

Hon Nick Griffiths	Hon John Fischer
Hon Tom Stephens	Hon Norman Moore
Hon Louise Pratt	Hon George Cash
Hon Ljiljanna Ravlich	Hon Peter Foss

**Clause thus passed.**

**Clause 10: Extension of time -**

Hon SIMON O'BRIEN: Clause 10 relates to the capacity of an authorised person, in a particular case, to extend the period of 28 days within which a modified penalty may be paid or the alleged offender may complete a cannabis education session. That extension may be allowed whether or not the period of 28 days has elapsed. The clause in itself is quite clear. I have a couple of questions relating to concerns raised by a lot of police officers throughout the State about the particular imposts this law may have on the requirements for storing seized quantities of cannabis, plants or pipes and utensils. What are the current requirements for retaining seized cannabis? Is there a particular time period or must a certain portion be retained in case it needs to be tested? Can the parliamentary secretary give some general advice on that?

Hon SUE ELLERY: Under the current cautioning system, once the education session has been completed, the police destroy the drugs under section 27 of the Misuse of Drugs Act. Section 27(1)(a) of the Act says that a police officer must destroy the drug once he is satisfied that no person will be tried with the commission of an offence in relation thereto. Under the proposed scheme, once the education session has been completed, it will be destroyed.

Hon SIMON O'BRIEN: I thank the parliamentary secretary for that response. It is clear that, when proceedings will not be taken, and in compliance with the regulations of the Police Service, prohibited drugs that have been seized will be destroyed. Therefore, obviously the question of storage is no longer a problem.

I would like to work through this question a little more. If someone were issued with a cannabis infringement notice under the proposed law, it would typically be done on the spot, not at some later stage. There would be no time considerations in that situation. I note that the parliamentary secretary is indicating her agreement that I am on the right track. Under the provisions of the cannabis infringement notice, people who have been issued with a CIN can opt for how they want matters to proceed. First, they can pay the modified penalty specified on the CIN and that is the end of the matter, and presumably the drugs would be destroyed in accordance with section 27 of the Misuse of Drugs Act. Secondly, they can attend a cannabis education session and upon the successful completion of that session, as evidenced by a certificate, and all other requirements being met, the matter is finished and, as happens now in those situations, the cannabis is destroyed. That can take some time because the person is given 28 days in which to give notice. There is a capacity for an extension to be given to the time within which a person can complete a CES. I do not imagine that would happen frequently and when it does happen, it would probably not be for long unless there were extraordinary circumstances, which would be quite rare. However, the 28 days could well blow out to 42 or 56 days for argument's sake. The same would apply when someone takes the option of paying the penalty specified on the CIN. Under clause 10 a person can get an extension for whatever reason. I will not speculate on what the reasons might be, but there is provision for an extension of time. If we expect a considerably large number of CINs to be issued - that remains to be seen but I suspect quite a few will be issued - a lot of samples of seized plant material will need to be kept for an extended period. A situation could arise in which someone reaches the end of the time period in which to pay the CIN penalty and at the last gasp says that he will elect to go to court. That could happen. Realistically that will not happen very often. I think it would be quite extraordinary if someone opted to do that in that way. However,

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because it may happen, the Police Service will be required to keep each and every one of these samples for what could be a protracted period. I raised the question of storage because it has been relayed to us through the Western Australian Police Union and other avenues that people are genuinely concerned about this issue. I do not know whether the parliamentary secretary has any response to offer on the matter of storage.

Hon SUE ELLERY: I am advised that the situation will be no different from the current situation. We are talking about relatively small amounts of material in any event. By its nature, it is not material that will take up a great deal of storage space. It will be no different from the situation that the police are in now in which they must hold material until the completion of court cases.

Hon SIMON O'BRIEN: There is another matter that I will explore. When some cannabis is seized, it is held in custody until such time as all parts of whatever judicial process is followed are concluded and it can be and is ultimately destroyed. In the meantime, there is the consideration of what is presented to court. In question without notice 1130, which I asked on 15 August, I asked in what circumstances was it necessary for police to have seized cannabis analysed by qualified chemists. I was told that analysis is undertaken only if a person charged with a cannabis-related offence enters a plea of not guilty. In other words, if the person admits the offence, the police do not have to prove that the cannabis is cannabis. That is fine. What I am contemplating is the possibility that a large number of people receive a CIN and off they go and that is all we hear from them. They do not expiate by paying the CIN, they do not elect to go to court and they do not elect to go to a CES - we just do not hear from them. I think we will find a very high percentage of people will fall into this category, so the police will be left holding the bag, as it were. The question is, what do they do with the bag; that is, the bag of cannabis? In due course, somehow they will have to deal with this matter. Is there a time when they write it off? If the alleged offender has decamped to live in a commune in Broome or has forgotten he has a fine to pay, do the police keep the sample forever or, as has been indicated to us, is it necessary at a certain time, whether it is 28, 42 or 100 days, for the police officer holding the cannabis sample to have it analysed because it might be required?

Hon SUE ELLERY: No.

Hon SIMON O'BRIEN: Unless there is a specific trip to court, it is not necessary to have the cannabis analysed, which is just as well. Let us hope that cases are expedited and people do not go to court in their droves, because that will raise the question of the cost of having samples analysed. The question has often struck me: why should people need to have cannabis analysed? I would be pretty surprised if people in that line of work did not know what cannabis is. They do not need a dog or a test kit, so I do not know why they need a chemist, but that is the standard the courts require. I thank the parliamentary secretary for putting those responses on the record.

Hon BARRY HOUSE: Could the parliamentary secretary enlarge on a couple of points? First, what sort of circumstances might be appropriate for an authorised officer to grant an extension of time? I can think of somebody who might be hospitalised, a student sitting exams or somebody like that, but perhaps there are other criteria. Second, there seems to be no upper limit stated in the legislation. Can an authorised officer issue an extension of time indefinitely? What are the guidelines for the authorised officer?

Hon SUE ELLERY: I am advised that it is anticipated that the main reason people would request an extension of time would be if they lived outside the metropolitan area and wanted to exercise their option of an education session. Education sessions will certainly be conducted outside the metropolitan area, but it might be that the next session at Tom Price, for example, would not be for another six weeks or something like that. That is why an extension of time might be needed. That is anticipated to be the most likely reason. As to whether there is an upper limit on the amount of time, there is not because the authorised officer would have to take into account the particular circumstances that might apply to the person at that time.

Hon BARRY HOUSE: That opens up the opportunity for a very cumbersome administrative process. If I may infer from what the parliamentary secretary is saying that the education sessions will be conducted mostly in the metropolitan area, that will present an enormous problem for many people caught up in this situation outside the metropolitan area if sessions are to be conducted once every three or six months. The other aspect that sets off a little alarm bell in my mind is the potential for it to be an open-ended situation in which an authorised officer in the Police Service may be very sympathetic to somebody caught up in this situation and might decide to issue an extension of time which virtually becomes limitless.

Hon SUE ELLERY: I will table a document which sets out where education sessions will be held in regional areas. It will be seen that there is coverage from Broome, Kununurra and Derby all the way to Denmark, Katanning and Walpole; so every region is serviced.

Hon Derrick Tomlinson: Before you table that, how many of these sessions will be held in each region per annum?



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Hon SUE ELLERY: The numbers will be determined by the demand.

Hon Derrick Tomlinson: I am sure you will build up a sufficient CES pool!

Hon SUE ELLERY: I shall ignore that. The member will recall that, in my response to the second reading debate, I provided members with a lot of information.

Hon Derrick Tomlinson: And very good, too.

Hon SUE ELLERY: The information was on cannabis education sessions and how they will be organised. The member might like to refer back to that. I have identified that all regional areas will be serviced by accredited treatment services providing education sessions. I seek leave to table that list.

Leave granted. [See paper No 1402.]

Hon SUE ELLERY: The second part of Hon Barry House's question related to whether there is an endless upper limit. The position is no different from the current situation in respect of the traffic infringement scheme whereby extensions of time can be granted. That system is managed and is manageable. It is anticipated that this system would not be any different from that.

Hon DERRICK TOMLINSON: I will come back to the question of the timing of the cannabis education sessions when we deal with clause 8. I want to explore the question of the extension of time. Perhaps I might illustrate by example my concern about the extension of time. We have in Western Australia an infamous case that is sometimes referred to as the Eucla case and sometimes referred to as the Eucla conspiracy. In that case a detective sergeant from the Esperance Police Station and three constables were charged and eventually found guilty of perjury and conspiracy to pervert the course of justice. A period of, I think, two years elapsed between the original complaint by a District Court judge and the charges being laid. One of the reasons for the delay was that the matter was being investigated by the police internal affairs unit. Under the Parliamentary Commissioner Act, matters brought to the attention of the Ombudsman - complaints against police officers being investigated by the Commissioner of Police - must be reported to the Commissioner of Police, I think within 42 days, but within a specified time. However, the Commissioner of Police may apply for an extension of time and an extension of time is "for the specified period". In the Eucla case, 18 extensions of time were granted, hence a considerable delay occurred between the offence and the charges being heard. The three constables and the detective sergeant were found guilty and served sentences of up to four years imprisonment. That was most unfortunate for them.

However, even more unfortunate was a case involving a constable from the Eucla Police Station. In the process of the police internal investigation of the original complaint relating to the three police officers, he was exposed as having committed a different set of offences relating to a different person, which his own colleagues found offensive and which his colleagues' wives found extremely offensive. He was charged under police regulations and dismissed. When the matter was heard on appeal through the police tribunal, he was reinstated. The reinstatement was on the grounds that three years had elapsed between the offences for which he was dismissed from the Police Service and the time in which the charges were eventually heard by the Commissioner of Police in a hearing. The three-year delay was due to the 18 extensions of time granted by the Ombudsman at the request of the Commissioner of Police. An injustice was done because justice was sought through the extensions of time. The Bill provides that "An authorised person may, in a particular case, extend the period of 28 days within which". Quite reasonable circumstances exist in which an extension should be granted. The parliamentary secretary has indicated that people living in remote regions must wait for an opportunity to undergo their cannabis education program. In extenuating circumstances, some people might apply for extensions of time because they need time to pay the infringement notice. That is just. No indication is given in this Bill whether continuing extensions of time will be provided. I think Hon Barry House asked whether an indefinite extension could be given. I hope an indefinite extension cannot be given. However, extensions of time could reach a stage at which it becomes unjust to impose a penalty because the time that elapses makes it quite unjust to impose the appropriate penalty. What checks and balances does the Bill contain against a just provision becoming an unjust provision? How will the extensions of time be controlled? How many extensions of time will be allowed? What period will be allowed for extensions of time? In which circumstances can extensions of time be provided?

Hon SUE ELLERY: This is an infringement scheme and the provisions of the extension of time are completely consistent with other infringement schemes. They are designed to maximise the flexibility available to the administration of the scheme. The scenario that Hon Derrick Tomlinson described is very serious. However, it is also significantly different to the administration of an infringement scheme that applies to small amounts of cannabis and a scheme that would require people to pay a financial penalty or attend an education session. I again suggest that the member read my response in the second reading debate in which I referred to evaluation.

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Hon Derrick Tomlinson: I would rather hear the parliamentary secretary elucidate.

Hon SUE ELLERY: I am sure Hon Derrick Tomlinson would. A number of matters will be examined in that formal evaluation as part of the infringement scheme. They include the education sessions; the impact on the Police Service in the court system, including the cost impact; the impact on alleged offenders; the prevalence of cannabis use; and, the impact on distribution networks. The capacity exists for the managers of the scheme to bring a wide range of other matters to the attention of the evaluation team.

Hon DERRICK TOMLINSON: I appreciate the advice given to me by the parliamentary secretary to go away and read her comments in response to the second reading debate. When she gave that explanation in the second reading debate, I mentally commended her for it because it was a very clear explanation. However, this is the committee stage in which we do not deal with principle but with matters of fact and the detail of the Bill. If the parliamentary secretary is willing to move, Madam Deputy Chairman (Hon Adele Farina), that you leave the Chair until the ringing of the bells, I will go away and read her response. However, in this committee stage I want to argue and I want to be satisfied on matters of detail. I can be satisfied on matters of detail while the House adjourns or from an explanation given to me by the parliamentary secretary. I have asked her about the checks and balances on the extensions of time. How many extensions of time are allowed? What extensions of time? What will be the duration of an extension of time? Otherwise, even though the parliamentary secretary is correct in saying that the Eucla case is different because it dealt with a provision under the Ombudsman's Act, this Bill deals with a provision under the Misuse of Drugs Act. They are two different issues. However, the same principle applies; namely, if the matter is not dealt with in an appropriate time, justice is not done. In fact, in the Eucla case an injustice was done. A constable who should have been drummed out of the force is now a senior constable in a suburban police station. The principle is the same. There must be a limit of time. I am asking the parliamentary secretary to explain what checks and balances are in place, or are intended to be in place, for extensions of time.

Hon SUE ELLERY: I did answer the honourable member's question when I referred to the formal evaluation process that is built into the Bill before the House.

**Clause put and passed.**

**Clauses 11 and 12 put and passed.**

**Clause 13: Completing one CES for multiple CINs -**

Hon SIMON O'BRIEN: The Opposition opposes clause 13, which is another fundamental fault in a flawed policy. Clause 13 states -

... if an alleged offender is believed to have committed more than one offence referred to in section 5, 6 or 7 on one day and is given a CIN in respect of each of those offences, the alleged offender is to be taken to have completed a CES in respect of each of those CINs if he or she completes one CES in respect of all of them.

The Government has provided explanatory notes, and the explanation in respect of clause 13 is as follows -

Clause 13 contemplates more than one CIN being issued to an alleged offender on a single day. This may occur, for example, where police find a person in possession of cannabis within the limits of the scheme and growing up to two plants.

Where this situation arises, clause 13 enables the person to expiate all alleged offences by completing one cannabis education session.

A police officer might encounter someone on the street in possession of an amount of cannabis falling within the parameters of this proposed law and accordingly might issue a CIN. He might then find himself at that person's premises where he finds up to two plants growing, and issues another CIN for those. It is interesting. The person will receive two CINs. He can pay two fines or go to one education session. That one CES would expiate the multiple or dual CINs. That is an interesting concept and it shows just how toothless this Government wants to be in this policy area. It can go a lot further than that. If a person commits an offence on a particular day and is issued with a CIN, in our view that is bad enough. In many ways we see that as an inappropriate response, but this proposed clause contemplates people committing multiple offences. We have been offered one reason in the explanatory notes and I have just offered a further explanation of how that could be applied, but if someone is issued with a CIN at the start of the day he must go to court - which he will not do - or pay the fine - if he has the money he will do that - or he can go to a CES. Clause 13 states that, if multiple CINs are issued on one day, they can all be dealt with in one CES. What is to stop that person who is served with a CIN, perhaps for smoking marijuana in public -

Hon Derrick Tomlinson: Up to 30 grams of marijuana.

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Hon SIMON O'BRIEN: Yes. What is wrong with that person committing the same offence the same day on several occasions if he wants to do so, because he will not suffer any greater penalty - even if he has come to the attention of the police? If a person really wants to stick it up the nose of the police by openly smoking cannabis or possessing a joint or whatever and smoking it in the main street or at the shops - heaven forbid that he should do it in an enclosed building - but if he did he is entitled to a CIN. That is what the police would have to do under this law. I do not want to hear any nonsense about discretion. This Bill directly contemplates multiple CINs being discharged through the mechanism of attending one CES. If that is not encouraging contempt for the law - which I have a sneaking suspicion is partly at the root of this ridiculous policy - I do not know what is. This is not only soft on drugs - an expression I generally do not use politically, but I will use it now - it is also soft between the ears. Can anyone provide me with examples of other forms of offences where a person can go on and on committing the same offence and still receive the same penalty with no increment? A person cannot do it with speeding or breaking and entering, although a few people have taken that a fair way, but he can do it under this legislation. In respect of this clause, if a person commits one offence on one day, he can have a special: he can go on committing the same blinking offence all day without accruing any additional penalty. That person can thumb his nose at this Parliament or the Police Force, which is trying to maintain order, and thumb his nose at people who want to go about their own business without having antisocial kids smoking dope in public because they do not give a damn. I have seen what happens to a community when that occurs and it is not pretty. What on earth is happening to this Government in proposing clause 13? It is probably going to tell us that everything will be all right. Bulldust! Absolute rubbish! That is the sort of arrogance that is driving this selfish and stupid Bill. That is why we will be opposing this clause with vehemence.

Hon SUE ELLERY: The intention of clause 13 is to provide an incentive for people to go into the treatment system. However, it is also the case that if the police have any reason to believe that the scheme is being flouted, they will charge.

Hon SIMON O'BRIEN: I listened with interest to the parliamentary secretary's response to the points that I raised, and I thank her for expressing her views. This clause states that if an alleged offender commits more than one of the offences referred to in the relevant sections on one day and is given a CIN in respect of each of those offences, the alleged offender is to be taken to have completed a CES in respect of each of those CINs if he or she completes one CES in respect of all of them. Nowhere does it say that if someone is taking the mickey out of the police by trying to use the system the police will have the power - not implied, but explicit, according to the parliamentary secretary - to say, "No way, sunshine. That is not how it works. You are having a go at us, and we are going to charge you." It does not say that. It specifically says that if a person commits multiple offences he can attend one CES - finish. The parliamentary secretary should not try to kid us that it says anything else.

Hon SUE ELLERY: The member needs to go back to the clauses that we have already dealt with tonight, which go to the question of when the police will exercise the discretion to issue an infringement notice or lay charges.

Hon Simon O'Brien: Where does it say that?

Hon SUE ELLERY: We have already had that debate. The discretion appears in clauses 5, 6 and 7.

Hon CHRISTINE SHARP: We need to keep in mind the perspective behind this Bill. Research not only in Western Australia but throughout the world has shown categorically that a criminal offence has a very low deterrent effect. In fact, the most effective way of preventing people from smoking cannabis is to provide them with the kind of information that they receive in an education session. That is the point of an education session. An education session is not limited just to the four-hour, or whatever, period in which people receive the information, because the information then enables them to do some self-reflection about their practices, their health and the management of their lifestyle. That is why intervention in this way is as far as we know the most effective tool that we can offer to reduce the prevalence of cannabis use. Members need to bear in mind that the use of cannabis is very prevalent. As discussed earlier in the debate, we know that in Western Australia about one-quarter of men in their early twenties will have smoked cannabis in the past week. It is that common. A system of criminal offence has been in place for many years, yet this level of cannabis use still prevails. Without completely reinventing the second reading debate, I would like to remind members that according to the expert information that is available, a cannabis education session is the most effective tool for reducing cannabis consumption, because all individuals have a built-in self-interest in looking after their health. That is why we support the intention that is found in clause 13.

Hon SIMON O'BRIEN: I will not keep this going for much longer, but in fairness to the parliamentary secretary I again went back to clauses 5, 6 and 7, which I think I have looked at long and hard for a very long time in a number of different forums, to check what the parliamentary secretary was saying and to explore the myth that these clauses contain a discretion with regard to what police officers can do. The clauses do not say that We

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went through this earlier in the debate with the advice of Hon Peter Foss and others. If we need to agree to disagree, so be it, but I will not let go by a comment from the Government that is clearly untrue in our view. If there is provision for a CIN to be issued in certain circumstances, then that is the court's requirement. There is no discretion of that nature in clauses 5, 6 and 7, and there is certainly no implied discretion that then carries through to clause 13, which we are considering at the moment. If there were such a discretion, there would be some words to say that, but there are not. If this is such a wonderful proposed law, why does the Government have to try to kid this Chamber as to what is actually written in the Bill? It is absolutely appalling. However, it is equally appalling that we are again being treated as fools. It is all very well for the parliamentary secretary to kid herself by spouting her press release-type remarks about this flawed and puerile policy, which was shown up for the fraud that it is many months ago, and if the parliamentary secretary wants to continue spouting that, then do so, if that is how little self-esteem she has, but do not spout it in our direction.

Hon SUE ELLERY: I do not intend to spout anything in any one's direction, and my self-esteem is just fine, thanks very much. We have already had a debate about whether a discretion exists in clauses 5, 6 and 7. That debate centred on the word "may", which goes to the discretion of a police officer to take action either under the infringement scheme proposed in this Bill or by laying charges under the Misuse of Drugs Act. The Crown Law advice to which I referred earlier went into some detail, albeit in a different context, about how that discretion is conferred and what may be described as an appropriate exercise of that discretion.

The DEPUTY CHAIRMAN (Hon Adele Farina): I take this opportunity to remind members of Standing Order No 97, which deals with offensive words against members. I will not take it any further than to remind members of that standing order.

**Clause put and passed.**

**Clauses 14 and 15 put and passed.**

**Clause 16: Cannabis education sessions -**

Hon ROBYN McSWEENEY: Hon Sue Ellery tabled a document about cannabis education sessions to be conducted by the Department of Health. The wording in the document is rather loose. It says that the Director General of the Department of Health is to accredit other persons to provide cannabis education sessions, such a function to be performed by accredited general practitioners or other appropriately trained and qualified health workers. There are no general practitioners in some of these areas, and GPs are very busy people. Who will be the appropriately trained and qualified health workers? Does the Government intend to call for tenders? One would think that some bureaucracy must be in place rather than simply have people spread all over the State. What will be the time frame of these education sessions - will they be over weeks or will people go for one two-hour session?

Hon SUE ELLERY: I went into some detail in this regard in my response to the second reading debate, but I am happy to do so again. All of the authorised drug treatment services - whether they be the core drug service teams servicing the regions set out in the paper tabled, GPs or other qualified health workers - must meet certain criteria: they must be able to provide the service in a location that meets the need without displacing people or forcing them to travel unreasonable distances; and they must have demonstrated professional credibility, competence and capacity to provide the treatment as assessed by advice from the state reference group. The agency staff themselves must have appropriate qualifications that will comprise relevant tertiary education and significant or extensive experience, together with substantial demonstrated education and training. The agencies must have a commitment and appropriate systems in place to ensure professional supervision of, and continuing education and training for, the people delivering the sessions. Agencies must agree that the service delivery will be in accordance with WA indicators of best practice, as with the conditions of the Drug and Alcohol Office contracts.

The member's other question was about the timing of the sessions. A session shall consist of a single one-and-a-half to two-hour education session provided by the authorised drug treatment service. It will usually be delivered on a one-to-one basis or in a small group of three to four people. The other question was about tenders. I am advised that the bureaucracy is already in place. The community drug service teams already exist and are already authorised providers under the cautioning scheme. That whole system already exists.

Hon BARRY HOUSE: I can see an industry developing with little groups of professionals who become skilled in and are recognised for providing these cannabis education sessions. That will obviously cost some money. Will the parliamentary secretary outline the anticipated budget that has been set aside for the provision of these cannabis education sessions? The parliamentary secretary circulated a paper a while ago indicating that cannabis education sessions are anticipated to be available at regional centres throughout the State. Will they be available by correspondence for people caught in remote situations? Will people be able to go to night school to do them? Is that the format we can anticipate?

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Hon SUE ELLERY: I have already answered that the services will be delivered on a one-on-one basis or in small groups of three or four. I am advised that flexibility is sought in remote locations, either through visiting services going to particular locations or perhaps through video-links; that is not yet determined, but that option is being explored. The other question was about the budget. The system is already in place with the community drug service teams, and the provision of the education sessions under the infringement scheme will come from the existing budget of the Drug and Alcohol Office.

**Clause put and passed.**

**Clauses 17 put and passed.**

**Clause 18: Enforcement of CIN under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* -**

Hon SUE ELLERY: Madam Deputy Chairman, the amendment to this provision also refers to proposed new clause 9, which we have not yet considered. We postponed clause 8 earlier this evening for this reason.

The DEPUTY CHAIRMAN (Hon Adele Farina): The parliamentary secretary will need to move for the postponement of clause 18 until proposed new clause 9 has been considered.

**Further consideration of the clause postponed until after the consideration of new clause 9, on motion by Hon Sue Ellery (Parliamentary Secretary).**

**Clauses 19 and 20 put and passed.**

**Clause 21: Warning notice -**

Hon SIMON O'BRIEN: I could not resist speaking on this clause. What is the Government trying to achieve with clause 21?

Hon SUE ELLERY: This is another way of tabling information for people who are likely to commit an offence under the Act.

Hon SIMON O'BRIEN: Perhaps I am the only person in the entire universe who sees an anomaly in this provision. According to clause 21, a warning notice must be displayed by a person who operates a retail shop selling smoking paraphernalia telling people that they will be doing something against the law if they indulge in cannabis use. A hefty penalty will apply if that notice is not displayed for people to see. I think that is the gist of what the parliamentary secretary just said. People who sell cannabis-smoking paraphernalia must put a sign by the door of the shop so that it is seen by people as they enter and exit. Am I the only person in all Christendom who sees a tiny anomaly, an inconsistency, in that approach?

Hon Derrick Tomlinson: No; I see it too, my son.

Hon SIMON O'BRIEN: Hon Derrick Tomlinson and I are islands in the stream. I draw great comfort from that news. With his interjection, I know that I am not alone.

Hon DERRICK TOMLINSON: Hon Simon O'Brien is not alone. In this State it is unlawful to possess a hand gun. The only persons who may lawfully carry hand guns are police officers. The only persons who may purchase hand guns are those who have a licence to purchase hand guns and who have demonstrated, among other things, that they are members of a pistol shooting club. They may use their hand guns for sporting purposes; that is, shooting targets within an authorised range. Nobody may sell hand guns to persons who are not authorised to purchase hand guns. Carrying hand guns is unlawful. Possessing hand guns is unlawful. A licensed hand gun owner must store the guns in an approved cabinet. The parliamentary secretary has told us many times that possessing, growing and using cannabis is unlawful. If it is unlawful to possess, grow and use cannabis, why is it lawful to sell a cannabis-smoking implement? That is the anomaly Hon Simon O'Brien has raised. The legislation says that a person may not do this but he may do that to enable him to do this. It does not make sense. Having produced that ludicrous argument, the Bill then says that a person may not do that but he may do this, provided he says to all the world through a notice in his store that smoking cannabis is naughty and that people should not do it because they will die or get a fuzzy head or whatever it is that cannabis does. We may not sell cigarettes to children; that is, persons under the age of 18 years. Can members imagine a law that provides that a person may not sell cigarettes to minors but that he may sell cigarettes to minors if he erects a sign telling minors it is dangerous? It is absolutely ludicrous to state in law that something is unlawful but that selling those things that enable people to do the unlawful thing is a legitimate commercial exercise.

I admired the perspicacity of the answer given by the parliamentary secretary that displaying a notice at places at which people sell implements to enable people to do unlawful things will educate people that the unlawful thing they are doing is harmful. If the thing is so harmful, why allow the sale of the implement? Why not prohibit the sale of the implement?

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Hon Simon O'Brien: People are not allowed to possess the implement.

Hon DERRICK TOMLINSON: I had not even thought of that. People are able to sell something that is unlawful to possess: "Please sir, I have not got it. I just bought it in the shop, but I bought it in a shop that told me it was naughty to do that". Perhaps the parliamentary secretary will provide some elucidation or explanation of that anomaly. Hon Simon O'Brien and I, who are only two confused people in the world, want to be elucidated and enlightened.

Hon SUE ELLERY: I make three points: first, the warning notice will be about the adverse consequences of cannabis use; second, this is the first Government in Australia to try to address the cannabis-smoking-paraphernalia industry; and third, the range of items that may be used to smoke cannabis is so wide that making the sale of the implements illegal would be meaningless in trying to address the problem.

Hon SIMON O'BRIEN: I thank the parliamentary secretary for the information. I now feel fully in control. If it is the case that the products referred to in clause 21 are so numerous and diverse that the Government could not possibly attempt to define them for the purpose of banning them, how are people meant to know if they are selling something for which they could face a \$5 000 fine if they do not display a notice? Does this mean that every electrical parts shop that sells alligator clips will have to display a sign, as prescribed by regulations, warning of the adverse consequences of cannabis use or risk a \$5 000 fine? Imagine all the sparkies going into an electrical supply shop for an alligator clip and being confronted by a sign telling them what happens if they use cannabis.

Hon Derrick Tomlinson: How do you use an alligator clip to smoke cannabis?

Hon SIMON O'BRIEN: Sometimes a thing called a roach clip, which looks like an alligator clip, is used. I am told that the idea is for it to hold a joint when it is burnt right down.

Hon Derrick Tomlinson: So that people do not burn themselves.

Hon SIMON O'BRIEN: Apparently - not that I have had anything to do with it in this or any other age. What other things could there be? A pipe -

Hon Derrick Tomlinson: A cigarette holder.

Hon SIMON O'BRIEN: That is for the upmarket cannabis user. Despite the digression, the question remains: if the things that could be used as smoking paraphernalia are too many and diverse to list, how on earth is any shop meant to know that it sells such paraphernalia and risks a \$5 000 fine if it does not display a sign?

Hon SUE ELLERY: Clause 20 defines cannabis-smoking paraphernalia as being anything made or modified to be used in smoking cannabis. The implement must be particularly for smoking cannabis.

Hon DERRICK TOMLINSON: Now it is not that there are many things that might be used as smoking paraphernalia, but those things that are defined by regulation. By the very process of defining or prescribing by regulation, we are establishing the limits of what is smoking paraphernalia. Now we are following a different argument altogether because, in spite of what the parliamentary secretary said earlier, there are smoking implements prescribed by regulation. Those smoking implements prescribed by regulation can be sold legitimately provided there is a notice warning about the dangers. Now we have a situation in which this is unlawful, that which enables this is lawful and, furthermore, that which has enabled this is lawful by regulation. What is regulation? Regulation is delegated legislation. Now we have, by law, a prescription of that which is lawful to do that which is unlawful. Entertaining little conundrum, is it not? Yes, it is indeed. Perhaps the parliamentary secretary will once more explain how that which is lawful by regulation, by delegated legislation, may be sold for purposes which are themselves unlawful.

Hon SUE ELLERY: I am not sure whether the member was confused at the end of the contribution he has just made about whether -

Several members interjected.

The DEPUTY CHAIRMAN: Order, members!

Hon SUE ELLERY: The offence occurs when the implement is used for smoking cannabis.

Hon DERRICK TOMLINSON: So the offence is when the gun is used to kill someone - is that what the parliamentary secretary is saying? It is unlawful to carry a hand gun. The Government does not want people carrying hand guns because hand guns are used to kill people. The parliamentary secretary is saying that the offence is an offence only when the gun is used to kill someone. That is exactly what the parliamentary secretary is saying. It is not an offence to possess a smoking implement until it is possessed.

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Hon Sue Ellery: No.

Hon DERRICK TOMLINSON: Of course it is. The offence is the possession of a smoking implement.

Hon Sue Ellery: No.

Hon DERRICK TOMLINSON: I see. The offence is not the possession of a smoking implement; the offence is smoking using a smoking implement. I refer the parliamentary secretary to section 7(1) of the original Act.

Hon Sue Ellery: That is what I said before. It applies if it has been used; if there are detectable traces.

Hon DERRICK TOMLINSON: It would have been used. Okay. It is unlawful to hold a hand gun because a person might use it to kill somebody. It is unlawful to possess a cannabis smoking implement because a person might use it to smoke cannabis. I am sorry; I may be a confused and doddering old man, but this confused and doddering old man has to make a decision on behalf of future generations of Western Australians. Please, help this confused and doddering old man to understand.

Hon SUE ELLERY: I am not sure there is anything more I can say to assist the member to become less confused and less doddering.

Hon Derrick Tomlinson: And less old.

Hon SUE ELLERY: There is nothing I can say to change that!

**Clause put and passed.**

**Progress reported and leave granted to sit again.**

*House adjourned at 9.56 pm*

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