

MISUSE OF DRUGS AMENDMENT (METHYLAMPHETAMINE OFFENCES) BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon MICHAEL MISCHIN: Turning back to the bill and what it is meant to achieve, it is fair to say that the object is to substantially lift the penalties that apply to drug traffickers dealing in methylamphetamine. Is that still government policy?

Hon Stephen Dawson: It is, member.

Hon MICHAEL MISCHIN: It is the strongest message that can be sent to the judiciary that the community expects an uplifting of the penalties to the wholesalers of this drug. The Attorney General was confident that it will respond. Is that still the position of the government?

Hon Stephen Dawson: I am advised that it is.

Hon MICHAEL MISCHIN: The minister does not sound very confident about it.

Hon Stephen Dawson: I am taking advice from my learned colleagues sitting around this table.

Hon MICHAEL MISCHIN: So it is the advisers' fault then?

Hon Stephen Dawson: Not at all.

Hon MICHAEL MISCHIN: By how much will penalties be lifted? The minister said that something like 200 people are currently in custody for trafficking offences. Is that right?

Hon Stephen Dawson: It is probably appropriate for the member to ask questions and then for him to give me an opportunity to stand so I can do it properly.

Hon MICHAEL MISCHIN: I noticed that the minister was taking notes. What is the figure? How many people are currently in custody and how many are convicted each year for trafficking offences within the scope of what is proposed—28 grams or more?

Hon STEPHEN DAWSON: The figures are difficult to ascertain. However, I have been provided with the following figures. In 2016, more than 170 cases of proceeds of crime confiscations involved more than 28 grams of meth. In 2016, WA Police sent 217 samples to the ChemCentre that involved more than 28 grams of meth. There is a note saying that cases and samples may involve more than one charge. That number that members have been looking for belongs to a number of agencies. However, these are the most reliable figures I have. As I said, the range is in various parts of government and in various databases—some with police, some with Corrections, some with the Director of Public Prosecutions and some with the courts. Some are highly sensitive because cases are ongoing and releasing them would prejudice cases or appeals, or breach privacy. They are the figures that have been made known to the police and they are the figures that I can give the house tonight.

Earlier this evening the member asked a question about a jurisdictional comparison of drug trafficking penalties. I am advised that the life penalty prescribed in this bill is amongst the toughest drug trafficking penalties in the country. First, the penalties are meth specific—drug specific—which is not how other jurisdictions have structured their acts and penalties. Second, other jurisdictions provide life imprisonment for trafficking, but in their regime a life penalty kicks in for a much higher quantity of meth. The application of these penalties depends on individual cases but generally, as at May 2017, in Victoria, life imprisonment is a penalty for trafficking about one kilogram of meth. In South Australia, it is also for large commercial quantities, so approximately one kilogram. If the offender is part of a criminal organisation, the penalty can be life for half a kilogram. In New South Wales, half a kilogram of meth gets the offender life. The Northern Territory does not have life imprisonment for sale or supply, but it does for manufacture. Possessing 40 grams can get an offender locked up for life. In the ACT, an offender gets life for possessing six kilograms. As members can see, it varies from state to state. At a commonwealth level, I am advised that there are obviously importation penalties but three-quarters of a kilogram is considered trafficking in a commercial quantity or manufacturing in a commercial quantity, and that gets an offender life.

Hon MICHAEL MISCHIN: What has been the maximum sentence imposed for someone trafficking in more than 28 grams in Western Australia, bearing in mind the maximum penalty at the moment is 25 years? What is the largest penalty ever imposed? I am not talking about the Customs Act; I am talking about penalties imposed under the Misuse of Drugs Act.

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Hon STEPHEN DAWSON: I am advised that currently the maximum penalty is 25 years but it varies from case to case.

Hon MICHAEL MISCHIN: That is precisely what I am driving at. The current maximum penalty is 25 years. Has any drug offender in Western Australia ever got 25 years for a trafficable quantity of methylamphetamine?

Hon STEPHEN DAWSON: As it varies from case to case, we will have to go back through each individual case. I do not have that information before me and I cannot provide it for the member.

Hon MICHAEL MISCHIN: What is the maximum penalty that has ever been imposed under the Misuse of Drugs Act on someone trafficking in methylamphetamine in Western Australia?

Hon STEPHEN DAWSON: I am advised that there have been incidences of upwards of 20 years in the past. Again, I do not have numbers.

Hon MICHAEL MISCHIN: Is the minister saying that someone trafficking in methylamphetamine has been sentenced to more than 20 years under the Misuse of Drugs Act?

Hon Stephen Dawson: Not necessarily under that act but there have been cases in the past.

Hon MICHAEL MISCHIN: That is what I am driving at. We are looking at increasing the maximum penalty from 25 years' imprisonment to life imprisonment—so far so good—but it has been said that this is not only one of the toughest penalties in the country, but also that it will significantly increase the sentencing practices of the court and it will significantly reduce the supply of meth in WA. Is the minister able to help me out at all with the sentencing practices in this state so we can see whether there is any substance to that rhetoric?

Hon STEPHEN DAWSON: I am advised that under section 6 of the Sentencing Act 1995, "Principles of sentencing" —

- (1) A sentence imposed on an offender must be commensurate with the seriousness of the offence.
- (2) The seriousness of an offence must be determined by taking into account —
 - (a) the statutory penalty for the offence;

The advice I am being given is that, as a result of this change—the increase from a maximum of 25 years to life—this section of the act should increase the penalties. The courts should take this into consideration which should mean that people will get more serious penalties.

Hon MICHAEL MISCHIN: I will give the minister an example of how it works. Let us say the courts are sentencing around 10 years as a tariff, with a maximum sentence of 25 years—all things being equal, the equivalent of life. By how much is it expected that that tariff would increase—11 years, 12 years, 15 years, 20 years?

Hon STEPHEN DAWSON: I am advised that it depends on the particular circumstances. It depends on aggravating factors. All things are not equal, let us be honest. The member knows that, as a former Attorney General; all things are not equal in this state. I cannot give the member an answer because each individual case is different. It takes into consideration aggravating factors and it also takes into consideration mitigating factors. However, the fact remains that if this bill passes through this place, the penalties will significantly increase from 25 years to life, and the maximum fine will also increase.

Hon MICHAEL MISCHIN: I will go to the fines in a moment, but this is precisely the problem. The relevance of the maximum penalty is to determine a range of sentences that can be imposed and also to allow the courts sufficient latitude to increase the sentences they might impose for offences in situations in which the sentencing range is currently inadequate. But if the maximum penalty is 25 years and the courts are going nowhere near 25 years, increasing it to life is not going to make much of a difference, is it?

Hon STEPHEN DAWSON: With the greatest of respect, member, as I said previously, section 6 of the Sentencing Act means the courts have to take this legislation, should it pass, into account. The member talked about something being precisely the problem; I think the problem, precisely, is that the member obviously has an issue with this bill, for whatever reason. Maybe it is to do with the fact that the last government did not legislate in this area. We are trying to legislate. We put our election commitments out there and the reality is that we were voted into government. This is an election commitment. The member might have an issue with it, but we believe this legislation, along with the other things in our methamphetamine action plan, are the tools that we need to get stronger in tackling the scourge of methamphetamine in Western Australia, and I stand by that.

Hon MICHAEL MISCHIN: My issues with the bill are several fold. It is not because of what the government is proposing but the basis upon which it proposes it. My issue with the bill is that it reneges on a promise made by the Premier in the lead-up to the election that he was going to do certain things as part of his strategy for punishing meth dealers, and he has not done them. We have heard weasel words and non-explanations as to why that may have been the case. We have heard that mandatory minimum sentencing has never been Australian Labor Party policy, yet he

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quite explicitly said in the lead-up to the election that that was what he was going to do. That is my problem with the bill. My second problem with the bill is that 25 years to life is not going to make the slightest bit of measurable difference to the penalties being imposed by the courts, yet it is being trumpeted that these are the toughest penalties in Australia and that they will significantly decrease the supply of methylamphetamine in this state. There is no way we are going to be able to measure it, because the minister cannot even tell me now what the tariffs are for these offences. When 25 years—a quarter of a century—is the maximum penalty, the minister cannot even tell me whether or not courts are imposing anywhere near 25 years, and he cannot tell me whether there is going to be any increase, let alone a significant one. That is my problem with the bill. As law and order policy, this is get-tough-on-crime, dressed up, but in fact there is no substance to it. That is my problem with this bill.

Let us deal with the fine aspect. It is going from \$100 000 to an unlimited amount. What is the maximum fine that has ever been imposed on a drug trafficker in Western Australia, without being sent to jail?

Hon STEPHEN DAWSON: We do not have that information, and I am advised that one of the reasons we do not have it is that courts do not like releasing that information because it can be tracked back to individual people. I am advised that some of the courts do not release this information because it can be tracked back to individuals. I want to go back to the member's question about sentences. I know, from reading the *Hansard* from the other place, that the Attorney General talked about individuals. One individual was sentenced to 23 years for four kilograms; another got 20 years; and a further individual got 20 years out of the 25-year maximum, so there are cases that are getting up to the higher end of the current scale, but unfortunately I cannot give the member any further information about the maximum fines at this stage.

Hon MICHAEL MISCHIN: All right, let us just go back to those as examples. Was the twenty years imposed under the Misuse of Drugs Act, the Customs Act, or a combination of other offences?

Hon STEPHEN DAWSON: I am advised we would have to go back to each of the cases to tell the member under which act the sentence was made.

Hon MICHAEL MISCHIN: That is not much of a help, but let us assume for the moment that it was 20 years for trafficking four kilos of methylamphetamine. What is wrong with that? How is life going to make it any different? Is it going to be 25 years, 30 years, 100 years? By how much would those penalties have been significantly increased if the penalty was life imprisonment at that time? Is the minister able to venture an educated guess on that?

Hon STEPHEN DAWSON: With the greatest respect, I am not going to make “educated guesses” tonight because that is not what legislation is about. I can say that life will make a difference to those people whose lives have actually been affected by this—whose husbands, wives, sons or daughters have been attacked by people on methamphetamine, and let us be honest: this happens, at this moment, in this state, as a result of people abusing methamphetamine. The legislation before us tonight, as part of the government's methamphetamine action plan, is an attempt to tackle this serious issue in the Western Australian community. I say again: perhaps one of the reasons the member is being so vocal about this bill is that he feels guilty for not acting during his eight and a half years in government. The reality is that we made this commitment at the election and we are acting this evening. Like it or lump it, this is the bill before us. If the member does not like it, he can move amendments to it, by all means. This is the legislation before us, so the member can tell us whether he likes it or not, but we are not getting anywhere. He is still stuck on the same point and I am not going to keep answering these questions if we are going to keep going around in circles.

Hon MICHAEL MISCHIN: With respect, minister, we are not going around in circles. I am trying to get some information. We heard in a speech from the Leader of the House during debate on the Sentence Administration Amendment Bill 2017 about how astonishing it was that we should send a bill to a committee because we could extract any information on it during Committee of the Whole. That is plainly not the case, even with this bill. The minister mentioned just then that a life sentence will make a difference to those who are affected or harmed by this drug. How? How will the potential for a life penalty—not that it will be imposed, but simply the prospect of life—make a difference to methylamphetamine trafficking if nowhere near 25 years' imprisonment is imposed? For two cases at most, 20-year penalties have been imposed, yet the minister is saying that having a potential life penalty for someone with 28 grams is going to deter them somehow from trafficking in drugs. How does that work? How will it make the slightest bit of difference?

Hon STEPHEN DAWSON: With the greatest respect, why do we ever increase penalties in any piece of legislation? It is simply as a deterrent. The advice given to me is that increasing the penalties in this bill will act as a deterrent and some people in the community will not do what they are doing now. The advice given to me is that this will have an impact. I grant that it is difficult and I have gone over the points already, but the fact is that we cannot access the various databases. That is an issue that we will have to address as a government. It is also an issue that members opposite had to deal with when they were in government. However, the advice given to me is

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that this bill will make a difference. As I said, people in the community who are affected by this stuff will recognise and see this as a positive act by the government.

Hon MICHAEL MISCHIN: Let me see whether I have got this right. I have a quantity of methylamphetamine with me, say a kilo, and I plan to sell it. Twenty-five years is not a sufficient deterrent for me because I stand to make a profit out of it. I would venture that a tariff may be four years—the minister is not in a position to contradict me because nobody seems to be able to know what the tariff is for these offences, but let us say I am looking at facing four years’ imprisonment with parole out of a maximum sentence of 25 years. Because the government is going to introduce a maximum sentence of life imprisonment, I am going to say to myself, “Oh, I’d better not do this. There’s no chance in the world that I’m going to get life for this but I’m now deterred from trying to make a profit out of selling drugs.” Is that the proposition? It is just a nonsense, minister. I put to the minister that mandatory minimum terms of imprisonment would make a difference. They might deter people because they would know that they will go away for a year if they have a small quantity of the drug for trafficable purposes. They would know that they will lose a portion of their life. There would be no question that they will go away for only a short time; if they have over a certain amount, they will go away for 15 years—no question about it. It would not be a gamble about whether it might be 20, 25, 10 or four years. That is more likely to be a deterrent, but that is something that this government has resiled from. How will the government measure the success of this bill? Is the minister saying that we will have a significant reduction in meth trafficking over the next 12 months or the next two years after the passage of this bill? How will we detect the success of this legislation—or its failure?

Hon STEPHEN DAWSON: I am sorry; the member will have to repeat that last question.

Hon MICHAEL MISCHIN: The minister cannot tell me anything about the sentencing patterns at the moment, but how can we gauge the success of this initiative—this sure-fire means of increasing significantly the punishment for drug traffickers so that it will reduce drug trafficking significantly in this state. How do we measure it? How much of a reduction does the government expect we will see in 12 months or two years by increasing penalties to life as opposed to 25 years?

Hon STEPHEN DAWSON: I acknowledge the issue of statistics. I guess that is one of the reasons that we committed at the election to creating a crime statistics bureau. There has been a significant gap in that space for a number of years and we are seeking to address it. I think it is appropriate that the questions Hon Michael Mischin has been asking this evening be answered. The fact remains that the current system does not allow that. However, we are committed to creating a new crime statistics bureau so we can measure it and develop more accurate data sets, which can be drilled down into and which will, hopefully, mean that in the future we can have confidence and comfort that these things are having an impact.

Hon MICHAEL MISCHIN: Just to wind up on that, it would be fair to say that when these policies were announced with the words, “We want to cut the supply of this devastating drug; our intention is to cut the head off the snake”, “This is an extremely tough approach”, “By increasing the penalty for meth traffickers to life we are acting to significantly reduce the supply of meth in WA”, “This will substantially lift the penalties that apply to drug traffickers in meth”, and “It is the strongest message that can be sent to the judiciary to uplift the penalties for wholesalers”, all of that was said in hope rather than having any sound, evidential basis or logical basis to support it. Would that be a fair comment? It is an expectation but it is not based on anything that the government can point to because it cannot even tell us what the current sentencing practices are.

Hon STEPHEN DAWSON: I do not think it is fair to say that this is just a hope. Advice has been given to the government, including by the Director of Public Prosecutions, that these types of deterrents work. We are doing this with the best of intentions. We believe that this is a tough approach. I spoke to the member about the penalties in other states. This will mean that we have some of the toughest penalties in the country. I do not think it is about hope, but in saying that, we are committed to creating a crime statistics bureau so that we can measure the impact and know how we are tracking in the future. As I said previously, this bill is an integral part of the suite of tools that the state needs to address the methamphetamine problem in this country and, in particular, in this state.

Hon MICHAEL MISCHIN: The minister just mentioned that the government had received advice that this will work. From whom did it receive the advice that this is the most effective way of going about addressing drug trafficking? The minister mentioned the DPP’s advice and that does not say anything of the sort. On the contrary, it tells us that there has been no noticeable recent increase in the number of state appeals alleging inadequate sentencing for methylamphetamine trafficking.

Point of Order

Hon MARTIN PRITCHARD: Deputy Chair, this seems to be continuing the debate on the policy of the bill. I thought that had been determined during the second reading debate. I am not sure whether I am correct in that. Could you make a call on that, please?

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The DEPUTY CHAIR (Hon Martin Aldridge): Hon Martin Pritchard has raised a point of order. I have taken advice and I remind Hon Michael Mischin that we are dealing with the substance of the bill before us rather than what might not be in it. I ask that he remain focused on the operation and effectiveness of the bill before the house.

Committee Resumed

Hon MICHAEL MISCHIN: I can understand Hon Martin Pritchard's concerns. Some things are better not looked into too carefully, are they not?

Turning to the question of monetary penalties, the minister cannot tell me anything about the sentencing practices there either, but has there been any suggestion from the Director of Public Prosecutions' office, or any other advice, that an unlimited penalty will offer a deterrent to drug traffickers?

Hon STEPHEN DAWSON: I am advised that there has not been anything in writing on that issue.

Hon Michael Mischin: At all—even verbally?

Hon STEPHEN DAWSON: I am advised that there has not been anything in writing, and my advisers cannot answer that question. However, I remind members that agencies such as the Department of the Attorney General, the DPP, the Department of Corrective Services, the police and the heads of jurisdictions have all been consulted on this bill, and have all had input into the legislation that is before us.

Hon MICHAEL MISCHIN: Given that it is taken as read that this bill will substantially increase the penalties so that people will spend a longer time in jail, although we do not know by how much, is any additional prison capacity required to accommodate the flood of either new prisoners or prisoners serving longer terms as a result of this legislation? How many extra beds will we need over time?

Hon STEPHEN DAWSON: I am advised that that is a matter for the Minister for Corrective Services, but I am aware that he continues to monitor this issue very closely.

Hon Simon O'Brien interjected.

Hon STEPHEN DAWSON: Unruly interjections are not welcome this evening, member. I am advised that the Minister for Corrective Services is monitoring this issue very closely.

Hon MICHAEL MISCHIN: All right, so we do not have an answer to that either, or even an estimate. Given that someone may be subject to life imprisonment and an unlimited fine, and given it is the government's policy not to imprison people in default of fines, what does the government propose to do with someone who has a fine imposed on them of, say, \$1 million, and they refuse to pay or cannot pay it? Do they go out and do community service work, or what? Do they work it off at \$250 a day? How does the government deal with that, or is it just another exercise in futility?

Hon STEPHEN DAWSON: I am advised that the courts can make decisions on these things. I do not have the answer to that question this evening. It obviously depends on individual cases. I really do not want to go through a series of hypotheticals this evening, because I cannot give the answers, and I am not going to make things up. It is important to this house that we provide the answers that we can. It is important to recognise, as I said previously, that there are issues with statistics in this space. The crime statistics bureau that has been committed to, I have to say, is long overdue, because it will allow us to develop more accurate datasets, and that is a good thing.

Hon MICHAEL MISCHIN: The minister has my sympathy. It is not his bill, and it is an area that he is not familiar with, and I am sorry to have to put him through all this. This discussion has revealed that this legislation is by no means the strongest message that can be sent to meth traffickers. It is a weak measure, and more window-dressing than anything of substance. There is no way of measuring whether this bill is founded upon any sound basis, or that it will make the slightest bit of difference to sentencing practices, let alone to methamphetamine trafficking in this state. There is no way of measuring its success or failure. It has been trumpeted as being something that it cannot be. On that note, I have no further questions of the minister, except to say that the experience has not been a particularly edifying one from my point of view, and it is one of the reasons I think the decision made by this house to refer the Sentence Administration Amendment Bill 2017 to a committee was a very sound one, because if the sort of information that could be gleaned from the government on that bill and its operation is consistent with what has been provided here, we will not end up with very much at all of practical use. I do not blame the minister for this; I think he is in a very difficult position, and I very much respect his attempts and integrity, but the government will have to do a whole lot better than this. This is a weak measure, and I have no further questions.

Hon STEPHEN DAWSON: We will have to agree to disagree. I do not believe it is a weak measure, and not only the advice I am getting from these people beside me but also the advice the government has received from a range of agencies and chiefs of jurisdictions is that this will help. I am sure members in this place will agree that we

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should be doing all we can to stem the scourge of meth around the state, and this is one thing that we believe will make a difference. As I said previously, it is our intention to ensure that there is a repository of crime statistics so that we can have confidence, moving forward with legislation, that things are measurable.

Clause put and passed.

Clauses 2 to 6 put and passed.

Clause 7: Section 34 amended —

Hon CHARLES SMITH: The shadow Attorney General has already spoken about mandated minimum sentencing, so I will not go into that issue any further. However, it is obvious from that question and answer session that the government has no appetite for bringing in really tough crime legislation. It is clear that the government has not had the will to take up the fight against organised crime. Biekie gangs operate with almost complete impunity in Western Australia, moving these drugs around the state. We have a high-ranking police officer here with us today who knows what I am talking about. One Nation in WA has the will to go up against these gangs and these drug traffickers, so I now seek to amend this legislation to achieve a series of objectives. Where the court does not impose a term of life imprisonment for a crime against section 6(1) of the Misuse of Drugs Act 1981 that involves a trafficable amount of methamphetamine, the court should impose a minimum term of five years' imprisonment. There should be no suspension of that term of imprisonment, and no parole for a minimum term of five years; that is, the offender does not leave prison for five years. I move —

Page 5, line 25 — To delete “life; or” and substitute —

life, and must be sentenced to a term of imprisonment of no less than five years; or

Hon MICHAEL MISCHIN: I have already spoken at length and highlighted that in the lead-up to the last election, the Labor opposition announced that there would be an increase of the maximum sentence for offences under section 6(1) of the Misuse of Drugs Act, so far as they pertain to the trafficking of methylamphetamine, from 25 years' imprisonment to life and a maximum fine of \$100 000 to an unlimited amount.

Following that, the then Liberal government proposed a policy that also introduced a graded series of mandatory minimum terms of imprisonment. The then Leader of the Opposition, the now Premier, on several occasions made it quite plain to anyone who listened to him that he was going to adopt the same policy that is now being resiled from. When this bill was debated in the other place, the opposition introduced the proposed amendments that we foreshadowed as part of our policy in the lead-up to the election and those were defeated. The bill now comes to this house. We do not propose to introduce those amendments here. That argument has been had and lost, and no doubt if the amendments were passed here, they would go back to the other place and be rejected.

However, what Hon Charles Smith proposes is a rather more modest commitment to mandatory minimum sentences for trafficable quantities of this drug—28 grams or more—so that anyone who commits the crime of having in his or her possession methylamphetamine with intent to sell or supply to another in a trafficable quantity of 28 grams or more, or manufactures or prepares methylamphetamine, or sells or supplies or offers to sell or supply methylamphetamine to another, will be subject to a minimum of five years' imprisonment. Possession of 28 grams of methylamphetamine can result in the forfeiture of all the offender's assets, which is a far more effective measure than a fine, I should add, because no-one is going to pay a fine if they have no assets to pay it anyway. It states nothing about eligibility for parole—parole could still be accommodated within that—and it is a minimum. This amendment is a measured and far more modest proposal than what was originally proposed by the opposition in the other place and by the Liberal Party in the lead-up to the election.

If the government is committed to having a substantial penalty that will deter people from trafficking in drugs of whatever quantity, this is a worthy measure. It will cause people to reflect on whether the gamble of spending five years in prison is worth attempting to traffic in methylamphetamine, whereas a maximum penalty—a prospect that will never be realised—of life imprisonment will not do so. It will make no change at all. The opposition supports this measure as a reasonable compromise and we urge the government to support this amendment in order to meet its commitment in the lead-up to the election and the impression that the then opposition gave to the people of Western Australia and the media; it propagated generally that it was going to do something similar. This is not as far-reaching as what was proposed and what the then opposition and the then government said it would do, but it demonstrates a commitment to address traffickers in a predictable, certain and condign fashion that reflects the gravity of the harm that they can cause to others. It will take these people off the streets. I urge the government to also support this measure and show the faith that it had gained from the people of Western Australia in the lead-up to the last election by proposing tough measures against methylamphetamine traffickers. We support the measure.

Hon ALISON XAMON: I rise to indicate that the Greens will not support this amendment, and that should not come as a surprise to anybody. As I have already stipulated, one of the reasons that the Greens were okay with

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contemplating the harsher penalties in the original bill was precisely because it simply extends a range of penalty options that would be available to the judiciary but would not bind the judiciary or remove judicial discretion by having any mandatory sentencing component. The Greens have been absolutely rock-solid on the issue of mandatory sentencing. Over multiple terms of Parliament, we have consistently spoken out against mandatory sentencing and the removal of judicial discretion, and that is not going to change today. If this amendment were to get up in this place, the Greens would reverse our position and would no longer be prepared to support the legislation that is in front of us today.

The Greens do not support mandatory sentencing overall for a variety of reasons, but primarily because it removes any sense of justice to individuals who are involved by not taking their circumstances into account. To be perfectly honest, the letter that was supplied to the government by Amanda Forrester, the Director of Public Prosecutions, and tabled earlier this evening, articulates well why there is no place for this amendment or for mandatory sentencing in this legislation. Because people reading *Hansard* may not necessarily have the opportunity to get a copy of the letter, I will just go through the key lines here. Amanda Forrester has identified—she is correct, in my opinion—that the introduction of mandatory sentencing is, firstly, an impediment to early resolution. She is right because over and over again we have found that when mandatory sentencing is involved, people avoid putting in a plea of guilty because they would rather fight it. We are stretching our limited resources within our court systems because people are concerned that they are not going to get any sort of justice or hearing.

The second issue is that it results in a consequent increase in the number of criminal trials and appeals because, rather than people pleading early and copping whatever sentence the magistrate deems appropriate, these matters are dragged out. We know that there are several processes in trials and the earlier that someone enters a plea, the earlier we can look towards resolution of the matter and sentencing. That becomes a drawn-out matter. Amanda Forrester states that it would increase the burden relating to expert evidence. As we know, a plea of guilty reduces the onerous nature of the subsequent court proceedings. That is not good for the system or for making sure that justice is dispensed swiftly.

The big thing that I have spoken about at length, and that I spoke about during the second reading debate on this bill, is that it fails to take into account the individual circumstances of the offender. I have spoken about how drug mules may get caught up in this legislation, as opposed to serious drug syndicate operators, who I suggest are the people we should be considering when we are talking about the potential for a life sentence. The point is that it removes the capacity for a magistrate to take into account all the circumstances of the offending. Finally, it creates inequity between drug offenders. All these issues need to be taken into account.

This bill seeks to extend the range of sentences that will be available to our courts. The Greens will continue to say that we need to be able to trust our courts to ensure that an appropriate level of justice is afforded to every person and to impose the sentence that is appropriate.

Hon RICK MAZZA: I rise in support of the amendment. What we need to consider tonight is that we are not talking about a drug user or a drug dealer. We are talking about a drug trafficker. We are talking about a person who has been convicted of being in possession of at least 28 grams of methylamphetamine. I admit that I was a bit concerned at first that the 28 grams that is prescribed in this legislation may vary greatly between one gram of pure methylamphetamine as opposed to 28 grams of pure methylamphetamine. My concern was that a person who has 27 grams of laundry detergent and one gram of pure methylamphetamine might be put in the same boat as a person who has 28 grams of pure methylamphetamine, or that a person who has 27 grams of pure methylamphetamine might not be caught up as a drug trafficker. However, the line of questioning from Hon Simon O'Brien suggests that at least 75 per cent of that 28 grams needs to be pure methylamphetamine.

What we are talking about in this legislation is being tough on drugs by increasing the sentence from 25 years' imprisonment to life imprisonment. Surely a very modest five years' imprisonment for a person who is convicted of trafficking methylamphetamine is a fair minimum penalty. I would suggest that if we are serious about being tough on drugs, five years' imprisonment should be the absolute minimum sentence for a person who has been convicted for being a drug trafficker.

Hon STEPHEN DAWSON: I appreciate the passion of members who have contributed to the debate and thank them for their contribution. Mandatory sentencing does not form part of our policy. I say that because there was a bit of argy-bargy between the former chair of the committee and me. The advice I am given is that mandatory sentencing tends to pick up the wrong people—it does not pick up the big end of town or the big traffickers.

Hon Rick Mazza interjected.

Hon STEPHEN DAWSON: It is a difficult issue. I have also been advised that some people who are caught with 28 grams of meth may well be users, not necessarily traffickers.

Hon Rick Mazza: It is still a trafficable amount.

Extract from Hansard
[COUNCIL — Tuesday, 15 August 2017]
p2732b-2740a

Hon Michael Mischin; Hon Stephen Dawson; Hon Martin Pritchard; Deputy Chair; Hon Charles Smith; Hon
Alison Xamon; Hon Rick Mazza; Stephen Dawson

Hon STEPHEN DAWSON: This is the advice I have been given. I do not use the stuff.

The DEPUTY CHAIR (Hon Martin Aldridge): Order, members! Let the minister respond.

Hon STEPHEN DAWSON: This is the advice I am getting.

Hon Alison Xamon in her contribution reminded us of the correspondence that was tabled earlier this evening from the Director of Public Prosecutions. The advice from the DPP suggests that there are a range of problems with mandatory sentencing. It is an impediment to early resolution; it results in a greatly reduced number of pleas of guilty; it has the potential to clog up court time; and it increases the cost significantly. This is in relation to mandatory sentencing.

Several members interjected.

The DEPUTY CHAIR: Order, members! The minister has the call.

Hon STEPHEN DAWSON: I am open to other members contributing and asking questions—by all means do so. However, if members want me to respond—I want to respond—they should let me do it. If Hon Charles Smith has more to say, I will sit down and he can say it again, and I will happily answer him. That is a genuine offer. I appreciate the spirit of this debate tonight. It is an important debate. However, I remind members that mandatory sentencing does not form part of our policy at the moment, for a variety of reasons. As I was saying, I am advised by WA Police that it has the potential to pick up the wrong people, such as small-time drug mules, and not necessarily the big end of town. Granted, I hear the comments that 28 grams is 28 grams, and it is a trafficking offence. What we are trying to do in this legislation is allow us to pick up those people who are causing despair and destruction in our community. This legislation is a real attempt to tackle that issue. That is what I am saying. As the DPP has pointed out, there are a range of issues with mandatory sentencing. One issue is that it provides less flexibility. Hon Alison Xamon in her contribution spoke about trusting judges, giving them discretion and providing a range of penalty options. I agree with that and the government agrees with that. Therefore, we do not support this amendment and will not be voting for it.

Division

Amendment put and a division taken, the Deputy Chair (Hon Martin Aldridge) casting his vote with the ayes, with the following result —

Ayes (14)

Hon Martin Aldridge
Hon Peter Collier
Hon Colin de Grussa
Hon Donna Faragher

Hon Nick Goiran
Hon Colin Holt
Hon Rick Mazza
Hon Michael Mischin

Hon Simon O'Brien
Hon Robin Scott
Hon Tjorn Sibma
Hon Charles Smith

Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Noes (14)

Hon Robin Chapple
Hon Tim Clifford
Hon Stephen Dawson
Hon Sue Ellery

Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Matthew Swinbourn
Hon Darren West
Hon Alison Xamon

Hon Pierre Yang
Hon Martin Pritchard (*Teller*)

Pairs

Hon Jacqui Boydell
Hon Jim Chown
Hon Dr Steve Thomas

Hon Alanna Clohesy
Hon Samantha Rowe
Hon Dr Sally Talbot

Amendment thus negatived.

Clause put and passed.

Clauses 8 and 9 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon **Stephen Dawson (Minister for Environment)**, and passed.