CANNABIS CONTROL BILL 2003

Committee

Resumed from 10 September. The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Sue Ellery (Parliamentary Secretary) in charge of the Bill.

New clause 9 -

Progress was reported after the clause had been partly considered.

Hon SIMON O'BRIEN: This proposed new clause was placed on the supplementary notice paper by the Government in the past few days. Hon Sue Ellery, as parliamentary secretary responsible for the Bill, moved this proposed new clause yesterday and explained its purpose. The new clause will amend the Bill to provide that if a cannabis infringement notice is issued for the relevant offences several times within a certain period, the offender is required to attend a cannabis education session, while of course still retaining the option for the offender to go to court after a third offence has been committed. The reason given by the parliamentary secretary yesterday is contained in the uncorrected *Hansard.* The reason is essentially to the effect that the new clause arises out of a concern that was first indicated by the parliamentary secretary about four weeks ago; namely, how to deal with the small number of repeat offenders who may be expected to be captured under the proposed cannabis infringement notice scheme. The proposal that the Government is now putting is basically that if within a three-year period a person is dealt with under the CIN scheme on two occasions and has the matter dealt with by either a court appearance, paying an on-the-spot fine or attending a cannabis education session, and a third offence is then committed within that three-year period, the matter will be resolved by the offender not being given the option of paying an on-the-spot fine but being required to attend a cannabis education session. That is, of course, if the offender chooses not to contest the matter in court.

The Government believes this is a means of positive intervention in the case of repeat offenders who possess or cultivate cannabis for their own use. The Opposition would be amused by this suggestion if the matter were not so serious. The Government by this amendment clearly does not have a clue about what to do with this issue and how to present it to the public. The issue at stake here is how can we positively intervene in the case of people who use cannabis at a personal level and who through some youthful misadventure or other personal miscalculation may find themselves coming into contact with the criminal justice system for that minor personal cannabis offence, but at the same time also have regard for the laws of our State and send the appropriate message to the community at large, and in particular to parents and children, about cannabis use. There has been concern in the community for a long time about how to deal with people who come into contact with the criminal justice system for a minor cannabis offence and how that can impact upon a person's life. It is the Liberal Party's view now and when we were in government that we need to recognise that young people in particular may potentially get a criminal record as a result of a minor cannabis offence that may be the result of some misguided youthful activity, peer group pressure or a lack of understanding of the consequences of their actions, and that may have an impact upon their lives that is significantly out of step with the seriousness of the offence. We realise that now and we recognised that when we were in government. That is why the former coalition Government introduced a system, which I understand is still working, whereby first time offenders who acknowledge that they have committed an offence are given an alternative. At the discretion of the police in the first instance they can opt not to appear in a Court of Petty Sessions to answer a charge against the Misuse of Drugs Act when it concerns possession of a small amount of cannabis. The option requires their participation in a cannabis intervention scheme that is very much like the one contemplated in the relevant clause of the Bill currently before us. The House would be aware that the Opposition does not oppose that clause. We thoroughly support and back all the way the intent and detail of the cannabis education system proposed in the Bill. However, the time for intervention is when a person has that first perhaps youthful -

Hon Sue Ellery: Indiscretion.

Hon SIMON O'BRIEN: - indiscretion, which brings that person into contact with the criminal justice system. Our experience tells us that an initial brush by young people with the criminal justice system is most likely to be the only time they will come into contact with the criminal justice system; basically, they learn a lesson from that one contact. Suddenly something that perhaps appeared to be a youthful lark becomes very serious indeed when youthful offenders find themselves in court. Their parents, of course, would be disappointed in them and, if they were teenagers, they would be especially purple with embarrassment at having to stand in the dock in public, probably with some of their friends present in the back of the courtroom, and be lectured sternly by a magistrate. The magistrate would say, "I don't want to see you here again. I'm going to give you a chance. I won't record a conviction and I won't send you to prison." That is typically how these matters are resolved. The magistrate would go on to say, "What you have done is wrong. You have let down your parents and you're letting down

yourself. You can make the decision whether or not you want to continue this behaviour and come here again, when I won't deal with you so leniently, or you can make a decision to understand that there are consequences for your behaviour if you continue to break the law."

It has been and continues to be the experience in this State that young people who have had an initial brush with the criminal justice system in that way, have gone away having learnt a lesson and are never again seen before the courts or in trouble with the police. The former State Government made a very valuable policy shift to introduce what was known, perhaps a little inaccurately, as the cannabis cautioning system. It was all about recognising that most people who have an initial brush with the criminal justice system, especially through a charge of possession of marijuana, learn a lesson and do not offend again. Therefore, the positive intervention, which the Government in opposition also supported, was the introduction of cannabis education sessions. They were not some sort of lecture that subjected recalcitrant youths to sit in a classroom with their arms crossed thinking, "What a load of rubbish this is." They were far more interactive than that. I believe members on both sides of the House supported the process which was put in place and which was intended to be continued regardless of any other legislation.

The feedback I have received when I have gone around the State to talk to the community drug service teams that are responsible for delivering these programs is that they do make an impact. The course offers offenders information not only on health concerns about cannabis use but also on the law relating to its use. That is important. Those programs provide an opportunity to discuss in a rational way the consequences of continuing to indulge in cannabis use. Every member can point to examples of people who do not understand that cannabis use can rob them of their vitality, their motivation and their ability to perform at work, at sport and at school. Not everyone who completes a cannabis education program goes away with a changed view; that is the nature of drug use. However, a significant number of people who participate in those programs do report that they have changed their attitude to cannabis use and, as a result of their whole experience with the police, the community drug support team and the like, go away with a different view. That is responsible and effective intervention. Under the current arrangements the police do not take the matter to court if the offender has successfully completed that program,. Therefore everyone - parents and the community at large - is sympathetic to the understanding that young people in particular do get themselves into trouble and need a little help to put themselves back on the right path. Everyone breathes a sight of relief, wipes their brow, hopes to get on with life and the person is not saddled with the effects of a criminal conviction. If at some subsequent time - it does not happen very often - that person re-offends for a similar offence, that person does so in the full knowledge of what he or she has done and what the consequences are likely to be. Sure, it is not a hanging offence, but it is an offence in the statutes for very good reason. It is not only about a person who wants to use cannabis; it is about all the other people in the community now and in the future who should not be exposed to a policy that says the Government believes that cannabis is not serious. Therefore, a person who has previously completed an education program would present to the court on a subsequent offence knowing that the magistrate would say, "You obviously haven't got the message. You were informed of the potential consequences of your actions. You were given a chance and you have betrayed that trust by offending again. Now you find yourself in front of this court again." That is a different situation from the situation that person faced for his first offence, and so it should be. What are we proposing to do? Do we seriously want to give a person the option of going to a cannabis education session again and again as he re-offends against the laws passed by this Parliament? Of course we do not. That is not effective and it will bring the law into disrepute. There is an entirely appropriate time for us to intervene in a person's life when he commits a minor cannabis offence and to provide the intervention given by the CES system; that is, when he first comes into contact with the criminal justice system and only on the first occasion. However, this amendment proposes something quite different. It proposes that if people offend on three occasions, we will only compulsory intervene in this way on the third occasion. A person might be found guilty by the courts on three occasions - that does not happen in practice within three years - or someone might get caught once and pay a fine - a slap on the wrist. However, if that person does not get the message and within three years gets caught again, he will receive another on-the-spot ticket. There will be no increase in penalty, no upping the ante, no development of a sense of need for intervention and no expression of the community's concern by increasing the penalty; that person will get just another ticket. If that person offends again and gets caught for a third time within three years, then the Government proposes to intervene by not allowing him to have an on-the-spot fine but to still have the option of a near-compulsory education session. That is too late and should happen earlier in the process for a couple of very good reasons.

I have already explained the rationale behind responsible, early and timely intervention, which was created in the former Government's policy. I am disappointed that this Government wants to change that because I have not heard any good reason for doing so. We have all heard by the by that the Government is concerned, as are the Greens (WA), that the coalition's program, although allowable by the law and guidelines and procedures, was not actually enshrined in the law. Fine, if that is what the Government wants to do, let us put it into law because

that program works. Having put it into practice, perhaps now is the time to enshrine it. The Opposition would be happy to talk to the Government about supporting that proposition.

Another thing that concerns me about this new clause is what will it really achieve? When the parliamentary secretary responds to my remarks shortly, I ask her to tell me how often people who are detected in the commission of the offences with which we are dealing subsequently reoffend for the same or similar offences within three years. My understanding is that the percentage is very low. I would appreciate any advice that the parliamentary secretary can provide about that, recognising that a vast number of offences go undetected. On the one hand there is feedback from people who have committed an offence and were caught for it but subsequently still use cannabis. There are plenty of people who do that and plenty who do not. On the other hand the number who get caught for a first offence, are dealt with and then subsequently offend, let alone within three years, is very low. From that we can extrapolate that the number of people who get caught three times within three years would be minuscule. They should not only be dealt with for offending against the Misuse of Drugs Act, but also be subject to positive intervention to deal with their stupidity. I suspect that the number of people getting caught three times for this type of offence within three years would be virtually zero, and I would appreciate the parliamentary secretary's advice on that. That is the second reason for this clause being questionable.

I am extremely surprised that this new clause has come about at all because during the course of the debate through the Parliament in particular, the Government has shown an absolute reluctance, until very recently, to change one word of this Bill, much less any aspect of the policy of the Bill. I am not sure why it has used this defensive mechanism. It probably just wanted to get it through the Parliament as quickly as it could to take off some of the public heat over the matter. What motivated the Government to then change - we now have a new Minister for Health and a new parliamentary secretary representing that minister - I do not know. This proposed new clause is set up to appear to be a major concession by the Government but I do not believe that it is. What is it all about? This new clause is, in effect, meaningless, because it proposes to intervene well after the opportunity for early intervention has passed and in the circumstance of a third separate offence in three years, which is unlikely to ever occur. What is the point of it? Is it just to send some sort of message that this minister is a different Minister for Health and is prepared to recognise concerns and compromise? Perhaps it is. However, it does not do anything by way of recognising community concern or by compromising. Incidentally, the Opposition is not interested in compromise on this matter. I will get to the Opposition's approach to this clause in just a moment.

This new clause purports to express concern and to show a desire to intervene positively. It clearly does nothing because going by any experience that the Government has had since the year dot, people will not be caught in any sort of numbers for a third offence within three years. If they did, what sort of notice would those people take of a system that proposes to give them a slap on the wrist with a sort of parking ticket on a couple of occasions, and then, on a third occasion, give them a talking to because the Government wants to positively intervene in what they are doing? It will not achieve anything. It certainly will not achieve what it purports to set out to achieve.

In summary, it is the Opposition's position now, which is similar to what it implemented when in government, that it is not only permissible but also desirable to recognise that first offenders are sometimes in that position because of misadventure and because they do not understand the consequences of their actions. The response by the community should be proportionate to that and should allow the opportunity for first offenders to participate in an education program so they are fully informed about what might happen in the future. Is that to some extent letting them off? I guess it is. Would some who really do not deserve to be let off go through that system? Probably; but the vast majority, as I have earlier explained, are otherwise good, decent young people who are having their one and only brush with the criminal justice system, and we want to make sure that they do not continue to have brushes with the criminal justice system. That is an appropriate response. If the Government were to propose, as Hon Peter Foss suggested a few weeks ago by placing an amendment on the Notice Paper, that there should be some restriction on this open-ended program of cannabis infringement notices, then we might be able to support that. He suggested by way of an opening ambit, which was picked up and examined by the parliamentary secretary - I congratulate her for at least doing that - how many offences should be permitted over a 10-year period, not a three-year period, because that is just not realistic.

The second reason that this proposed new clause remains unsupportable from the Liberal Party's point of view is that it is not serious. If we are waiting on an unlikely third offence to intervene, we are not serious. We are serious about positive intervention; we are serious about our drug laws; we are serious about the messages we send out to the community; we are serious about supporting parents; we are serious about supporting families; and we are very serious about supporting people who might be at risk of spoiling their prospects through cannabis use.

With all that in mind, the Liberal Party will not be supporting this proposed new clause. I do not see any reason for the Government to proceed with it. I think the Government's cover is effectively blown and this proposed new clause does nothing except confuse the issue. I might have one or two more things to say on this issue, and I know other members want to comment, but I would ask whether the parliamentary secretary can give us some figures about repeat offenders currently.

Hon SUE ELLERY: Based on the evidence that is available, my advice is that there is a small probability of reoffending the number of times that the honourable member referred to. In three years it would be less than 10 per cent. I refer the member to the report of the UWA Crime Research Centre entitled "The Criminal Careers of Drug Offenders in Western Australia: A study of the recidivism and criminal history of those arrested for a drug offence in Western Australia between 1989 and 1999" published in May 2000. That study examined the estimates of rearrest at shorter follow-up periods, describing it as cannabis user to cannabis user. The rearrest probability at two years for a cannabis user who has no prior conviction is nine per cent, and moves up to an estimated rearrest probability of 15 per cent for a cannabis user who has had mixed prior convictions. Those figures are set out at one-year, two-year and five-year intervals. I am not able to provide the break-up at three years.

Hon Simon O'Brien: That is indicative. I thank the parliamentary secretary.

Hon PETER FOSS: I regret that the Government has not seen fit to address this problem in a proper way. During the debate many assurances have been received, especially from the Leader of the House, that this posed no threat to our community because all it was intended to do was prevent people from gaining a criminal offence record. First of all, we worked out that it is not a criminal offence; it is a summary offence just like any other offence of that nature, and as far as people under 18 are concerned, this does not affect that. The Young Offenders Act deals with that. We are now dealing with enforcement. In every other area people are given chances. For instance, if a person speeds he gains a point. If he continues to speed he accumulates points. He may be committing the same offence each time, but we automatically come to the conclusion that he should not be driving if he accumulates 12 points. He is not learning his lesson. That is part of how any form of discipline or penal system works. The offender starts with a penalty that is reasonably minor and works up to something that shows that something is meant by it, and if he persists something will have to be done about it because he is obviously not learning. This is particularly worrying in the case of drug offences because it plainly indicates an addiction. People will not learn because frequently they have an addiction, and something needs to be done about it.

The other problem, especially given the quantities we are dealing with - the Leader of the House was very quick to point out that if the police thought the person was a dealer they would not use these provisions; they would prosecute - is that that omits an understanding of the most basic rules of law enforcement. Policemen will not prosecute if they believe that, firstly, the law and the courts regard it as very minor, and after they have done all the work to try to stop something that they regard as important, there will be no penalty. The classic case of that was streetwalking and minors in brothels. It was hardly worth the police going through all the problems of proving a matter if at the end of it all the court was going to issue a $10 fine! There was also the recent example of the Director of Public Prosecutions refusing to take a charge of keeping premises for the purposes of prostitution on indictment because he said there was an alternative summary offence available, and he was not prepared to do so. He did not consider it in the public interest. He knew what would happen, because while that alternative offence is available, it will be very difficult to get the court to take it seriously. Courts do pay some attention to the penalty Parliament has set - not a lot of the time, but it does pay attention when we indicate that it is not all that important. If a CIN is put in place, the Government will be sending a clear message to not only the public but also the court that this is not an important offence. The police cannot go along and say they are prosecuting because they think this person is a dealer for purposes for which they cannot tell the court because it is not evidence in the case, but this is the umpteenth time they have found this bloke with 30 grams in his pocket, all divided up into foils.

Hon Kim Chance: Would he not then be charged under the appropriate provisions?

Hon PETER FOSS: Under this proposal there is only the CIN. The problem is that that becomes the first opportunity, and it is likely that all that will happen is that the court will regard it as another example. The Government will not be able to bring these charges, because the CIN just gets rid of them all. It is not a conviction; that is the whole point. The Government does not intend the person to have a record for this offence. It will be extremely difficult for the Government to get the court to take this seriously, because Parliament has said it does not have to be taken seriously. It will not even get to court; the police will not bother because they will know that in the end the offender will be given a slap over the knuckles. Not even the first offence will amount to a conviction. The Government and I know that the police will not prosecute if it is not worth their

while. Do members opposite think that the police will spend days seeking a conviction when a case is difficult to prove and the offender will ultimately receive nothing in the way of a penalty?

Hon Kim Chance: What is the average penalty the courts award now for a first offence of possession?

Hon PETER FOSS: Under the Misuse of Drugs Act, after the fifth offence things start happening.

Hon Kim Chance: What about a first offence of possession?

Hon PETER FOSS: The first offence is minor; a person should not get five offences. Under this Bill, that fifth offence penalty will not apply because there will not even be one offence.

Hon Kim Chance: It is a minor penalty, isn't it?

Hon PETER FOSS: Yes. If offenders persist, they will receive something.

Hon Kim Chance: Does that not defeat the logic of your argument that there would never be a first offence charge?

Hon PETER FOSS: No. The police know that people will be convicted of the first offence because they will not fight the charge. Under this legislation they will fight it. They will want to know why they are being charged with an offence rather than being issued with a cannabis infringement notice. I do not think the Leader of the House understands the situation. When people are charged with a traffic offence, they usually do not fight it in court. Most people know they are guilty based on the evidence. They are unlikely to add court costs to the fine, so they cop it. Under this legislation, if a drug dealer faces a fine, he will fight the charge. Someone in the court will say that it is an abuse of process because the person is being put to the trouble of having to fight the charge when he could have been given a CIN. The police will be questioned for wasting the court's time on that basis.

Hon Kim Chance: Possession and dealing are different offences.

Hon PETER FOSS: Yes. How can dealing be proved? The difficulty is that a person might possess a certain quantity of cannabis, which is not 30 grams but is a darn sight closer to 30 grams than most people would normally have on them. A person must either be caught in possession of a quantity over that amount or be guilty of a number of possession offences.

The problem with this Bill is that the police will not charge someone with the first offence simply because they run the risk of going to court and being abused for not issuing a CIN. The police will not charge someone if they know they are likely to be criticised, will probably have to argue against a lawyer to prove the case, and the court will provide a piddling penalty. People will have plenty of money for their lawyers because it will be easy for them to run a nice little dealing business under this legislation. Criminals are very much like businessmen. They do whatever is easy. Cannabis will become very easy to acquire in this State, so they will deal in more cannabis. It is just a matter of responding to market pressure. We could call this a good bit of deregulation under the National Competition Policy. We are encouraging better competition in cannabis. Unfortunately, that will create an oversupply, as is now the case in South Australia where dealers are supplying to the central desert area. All the Aboriginal people there are buying very good cannabis from Adelaide, which has become a great source of good cannabis. A few years ago, cannabis use in the central desert was not a major problem. The quantities of cannabis now coming out of South Australia is so great that people have to export it.

One of the big problems when we establish laws is the expectation that people will continue to behave the same as they did before. A classic example is when a law is passed to stop a form of behaviour; however, people do something worse because that worse behaviour has not been prohibited. In this case, the Government is assuming that the amount of consumption and the number of people consuming cannabis will be exactly the same as it is now. It is assuming that the abolition of a penalty will not change anything; people will behave the same but they will not acquire a criminal record. That is not the way human beings work. Another example is Pitt's window tax. It was a famous example of how legislators did not understand how human behaviour could change in response to a new law. Pitt had the brilliant idea of imposing a tax based on the number of windows in people's homes and buildings because he thought it was a wealth tax - the more windows people had, the wealthier they were.

Hon Simon O'Brien: It was the premium property tax of the day!

Hon PETER FOSS: Yes. He thought that tax would earn more money from the rich and be less of an imposition on the poor. What a fair tax it would be. However, all the landlords walled up the windows in the tenements.

Hon Derrick Tomlinson: And the factories.

Hon PETER FOSS: Yes. Everybody lived and worked in the dark.

Hon Ed Dermer: They got rickets.

Hon PETER FOSS: As Hon Ed Dermer said, they got rickets. It was a brilliant move. People do not continue to behave in the same way they did before a law was changed. The law-makers do not get rid of the bad behaviour by simply changing a law.

If the Government is so determined to enact this law, it should keep in mind that it will change the behaviour of police first and foremost. When the police thought nothing was being done about burglaries, they told people that an offence was not worth investigating because if they caught the offenders the courts would let them off. Whether the police were right or wrong in doing that does not really matter; it is what the police believed was the situation.

After this legislation is passed, offenders will change their behaviour. They will think that it does not matter what happens - they will not get a record and the fine is only $100. The police might not bother because they are required only to issue a CIN anyway. It will also change the behaviour of dealers. If a dealer were caught carrying more than 30 grams, he would be stupid. He should be pretty safe with less than 30 grams, because no matter how often he gets caught, nothing more will happen. The police will keep issuing CINs and dealers will continue to trade away as much as they like.

Hon Kim Chance: That is absurd logic.

Hon PETER FOSS: Why? There speaks a bloke who did not succeed in business. If a trader can see a safe way of doing business, what will he do? He will consider the law and say to himself that if he has possession of 30 grams he will be safe because he will not get caught - he will be issued with a CIN. The Opposition wants to prevent that, albeit it believes the message is wrong in the first place. If the Government is so determined to pass this legislation, it should put a reasonable stop on that potential attitude. The stop the Government is including in the Bill is far too generous.

It is already accepted that after a reasonable period - about 10 years, depending on the conviction - a recorded conviction can be extinguished. However, a dealer would have to be dumb to be caught in possession on three occasions in three years. The legislation should impose some sort of lid on dealer behaviour in particular and not make it so easy that people in the community think they might as well take up smoking cannabis because it is no different from smoking cigarettes. I have heard that said in this Chamber. The fact is that it is much different and we do not need another legal drug. We should try to do what the Government wants, even though I do not agree with it, and put a realistic block on dealer behaviour to provide at least some encouragement to police so that when they catch a dealer they can do something about it knowing that at some stage they will get a result. I do not think CINs should be issued at all; nevertheless, we should put a realistic block on the number of times they can be issued rather than provide mere window-dressing.

Hon RAY HALLIGAN: I also have very grave concerns about this proposed new clause, as I have about the entire Bill and the attitude of the Government to people who smoke this still illegal substance. Certain things have happened to me over the past couple of weeks to have caused me, as I am sure would be the case with others in my situation, to think a little more strongly about such issues: I have now become a grandfather for the third time with my first grandson.

Hon Kim Chance: Congratulations.

Hon Derrick Tomlinson: Congratulations.

Hon Peter Foss: Yes.

Hon RAY HALLIGAN: I thank members very much. I had no say in what my youngest daughter was doing. I could not say that a Labor Government is in power so she should not have her son yet. However, this event caused me to concentrate my mind on the future, which is under discussion in this debate. The Bill before us and, more importantly, the proposed new clause will do something for, and, I hope, not against, perpetrators of crime. My young grandson will be named Thomas William James Regan. I can assure members that he will be looked after and watched; I will not abrogate my responsibility as a grandparent, and I know full well that his parents will not abrogate their responsibilities. My grave concern is that the Government is abrogating its responsibilities to look after my grandson.

This proposed new clause, as has been said by more eloquent speakers before me, does absolutely nothing. Fancy a person waiting to receive a cannabis infringement notice on three occasions before being advised that what he or she is doing is illegal, and also being advised of ways and means out of the demise. I agree with Hon Peter Foss entirely regarding what the police will do: unfortunately, as they are under-resourced, they will take the easiest road. If police were better resourced, I hope they would not do so.

Young people who have taken up smoking tobacco are inundated through the Quit program, at a cost of tens of millions of dollars, with suggestions that they are doing something injurious to their health, but we will not go down the same path concerning the ingestion of cannabis.

Hon Peter Foss: Mr McGinty has now reduced funding available in health for that program, not increased it.

Hon RAY HALLIGAN: It appears that funds are being decreased in many areas; therefore, services are being reduced. That is another argument and debate for another day, which I am sure will arise very shortly.

The Government is not, as it says, hard on drugs. If it will wait for a third CIN before causing people to attend an education session, the Government is not real. It has not thought this matter through. It has not done and continued to do what we tried to do in government; namely, to provide the type of intervention that is required now and will be required in the future. Why wait this length of time? It may appease the conscience of members opposite so they can say another election promise has been met; however, they are merely words on a piece of paper and utterly meaningless. Be assured, the greatest majority of people, particularly parents and grandparents like me, are very concerned about this issue. It is up to the Government to stand up and show people that it is trying to do something for their offspring. What is presented to Parliament does not do that.

Hon SUE ELLERY: The Government is indeed serious. As I have said before, evidence indicates that although some people will respond to an initial intervention, others will take more than one attempt to stop an addictive behaviour. Treatment has consistently been demonstrated to be more effective than using criminal sanctions for this type of offence. A small group of recidivists is involved.

The proposed new clause standing in my name brings into sharper focus the difference between the sides of the Chamber on this issue. The Government places a higher priority than members opposite on getting people with the problem into treatment services. In saying that, I do not attempt to diminish the strength of feeling on the other side, which I understand. However, we have a difference. Criminal sanctions alone are not effective for such offences involving such amounts. The capacity to charge will be retained for the police when they have any evidence of dealing under section 6(1) of the Misuse of Drugs Act to which the infringement scheme does not apply. If the court were to find that the test with the evidence of dealing had not been met, section 10 of the Misuse of Drugs Act will provide that the person could be found guilty of the simple offence.

Some reference was made earlier to South Australia, and I made this point in my response to the second reading debate: there is no evidence from South Australia that this sort of infringement scheme increases the use of cannabis.

Hon SIMON O'BRIEN: I look here for some common ground. I think we found some this morning, at least in sentiment, although the parties certainly disagree on the detail. I recognise the parliamentary secretary's view to be absolutely sincere when she stated that she is not about making people into criminals; that is, rather than having some harsh anticriminal response to cannabis users, she would rather see a positive intervention. I think that is consistent with the parliamentary secretary's comment. That is the Opposition's view as well. At no time in this debate has the parliamentary secretary heard me or anyone else in the Liberal Party say that we must crack down on minor cannabis users and deal harshly with them. Never have we said that we must throw the book at them, lock them up or any such sentiments - not once. I re-acquaint the House with the news that the Liberal Party is not in favour of cracking down on minor users through having disproportionate penalties. I have already discussed our response in detail this morning. Our response is to recognise that for most people there is far more value in positive and early intervention. We just heard from the parliamentary secretary that the Government's view, and I believe her personal view, is that it should intervene positively. Why wait until the third time someone is caught to intervene and tell that person that he must go to a CES? Why on the first occasion is a CES only an option rather than the only course of action?

Hon SUE ELLERY: In effect we are not waiting until the third offence to intervene because there is a financial incentive for someone to attend an education session the first time he gets caught. People who attend an education session do not have to pay a fine.

Hon SIMON O'BRIEN: That proves Hon Peter Foss's argument about a financial penalty that is payable by traffic or parking ticket-style arrangements. That will be quite an impost for some people. As a result of their circumstances or the fact that they are not quite with it and do not understand what is going on, they will fail to pay the fine and be subject to harsher consequences when they are eventually tracked down in Broome or Rottnest Island or wherever they have drifted to. However, the people who take advantage of this regime, or the people for whom they are growing the plants, will pay the fine the very next day. That is the experience of the South Australian police, which has been communicated to the Western Australian police. I know that because they have told me so on several occasions. That is on the record.

We now have our respective positions on the record. However, before we draw debate on this proposed new clause to a close, one other vital element needs to be considered. It relates to the figures, statistics and other hard

information about recidivism. I thank the parliamentary secretary for the information she provided, the gist of which was that the rate of people involved in a cannabis-only offence who re-offend within two years is nine per cent. The remaining 91 per cent are not picked up again in two years. That is pretty low. It is probably much lower than the actual incidence of repeat use. If I recall the parliamentary secretary's answer correctly, the rate of those who commit a repeat offence for cannabis possession or use together with other offences within two years is 15 per cent. That tends to support the arguments I raised in my earlier remarks this morning that the initial brush with the criminal justice system overwhelmingly - although not for everybody - tends to be the only brush with the criminal justice system. We need to take that opportunity for intervention, which is what we are doing at the moment. Hon Peter Foss and I are concerned that the changes proposed by this Bill will result in a dramatic increase in the recidivism rate. If it does, there will be a range of concomitant problems, such as people abusing the system to cultivate or deal within the limits prescribed in the infringement notice system. I know that dealing is not allowed and is not covered by this Bill. However, the fact is that someone who is dealing and has 25 grams of cannabis in his pocket would be well under the CIN limit, and would get pinged for only that. In other jurisdictions I have visited, dealers get a youngster, typically under 14 years of age, who aspires to be a drug dealer - what a tremendous career aspiration - to do the deliveries so that the dealer does not get caught with the stuff on him.

I return to the main question at hand. I have two other sources of information. Ms Geraldine Mullins, who is committed to combating this Government's policy, forwarded me a copy of a letter. I thank her for her support. She lives in Geraldton and through, I think, the local member, she obtained some communication from a statistical analyst in the Department of Justice. The letter to Ms Mullins is dated 7 May 2003 but contains no other reference. The letter provides some details and numbers about possession and use convictions. The data for cannabis possession/use includes the type of conviction. According to the note in the letter, these convictions relate to people caught having smoked or used cannabis; having used cannabis; in possession of cannabis; using or smoking cannabis on premises; in possession of cannabis resin - hash - which is not part of this CIN system; in possession of utensils for smoking drugs; in possession of utensils for using cannabis; attempting to obtain possession of cannabis; and possessing an implement for drug use. In 2001-02, there were two prison receptions resulting from cannabis convictions. The idea sometimes put about by the American lobbyists is that we are throwing our young people into prison for minor cannabis offences. As the parliamentary secretary knows, that does not happen here. That is not a point of debate. Other cannabis convictions were dealt with by community corrections orders. Of the people given a community corrections order, none received home detention bail, 43 received a community-based order, two received an intensive supervision order and 26 received a work and development order. The total number of community corrections orders that were given to all the people who were convicted for all those offences in the last year for which we have full figures is 71. That is what we are debating: 71 rather than thousands and thousands of people.

Hon Peter Foss: Now they will probably get a fine they cannot pay.

Hon SIMON O'BRIEN: Exactly, and a heap more will be caught. That is our prediction. Be it on the Government's head in due course. The letter also relates to some other matters for all drug use and not just cannabis, but I will not go down that path. With that very much in mind I asked a question on Friday, 15 August. It was placed on notice because it could not be answered in the time available. The question was addressed to the minister representing the Minister for Justice, and it was answered on Wednesday, 10 September, in question on notice 1119. I asked -

(1) How many persons in Western Australia were sentenced for custodial sentences following conviction for possession of cannabis (and only for possession of cannabis) in 2001/02?

That was, of course, the subject of the earlier advice to Ms Mullins. I asked also -

(2) What was the circumstances of each offence, including -

(a) age of the offender;

(b) amount of cannabis involved;

(c) length of sentence; and

(d) aggravating circumstances which required a custodial sentence be imposed?

As we have already discussed, the courts basically do not impose harsh penalties for minor cannabis offences. I asked also -

(3) Have any persons at all received custodial sentences for similar offences since then and if so, how many and in what circumstances.

The answer to question (1) was three. I know the letter said two, but I think there might have been a bit more thorough investigation since that time. With regard to the average age of offenders, bearing in mind that some of the proponents of this law are saying that we are being too harsh in throwing young people into jail, the answer was unknown; 37 years; and 44 years. With regard to the amount of cannabis involved in each offence, for the first offence the amounts were 8.5 grams and 26.5 grams; there were two charges. It is interesting that separately those two amounts would fall below the limit for informal expiation proposed by the Government, but together they would be well over it. For the other offences, the amount involved was not available. With regard to the length of sentence, the answer was three months; three months and one day; and three months. The second offender obviously had a hanging judge on a bad day.

Hon Peter Foss: It would be six months now because of the new sentencing laws.

Hon SIMON O'BRIEN: Indeed. The answer to the last part of the question, which was whether any persons at all had received custodial sentences for similar offences since then - that is, since June 2002 - was no. The key question that I asked was question (2)(d); namely, what were the aggravating circumstances that required that a custodial sentence be imposed, because despite some of the folklore, it is extraordinary for a person to receive a custodial sentence for a minor cannabis offence, as these figures prove. The answer was -

> Information is not available as to any aggravating circumstances taken into account by the courts when sentencing these offenders. However, it is worth noting that each of the offenders were already serving terms of imprisonment at the time of being sentenced for their cannabis offences.

These people were already in prison. Not one person has gone to prison for a cannabis offence under the system that has existed to this day. Where is the harsh treatment that the former coalition Government is alleged to be supporting? It is not there. Where are the massive number of offenders who are being blighted by having to go to prison? They are not there. The offenders are aged 37 and 44, and they are currently in prison for other offences. Members who have been inside prisons in this State would know that prisoners aged 37 and 44 would virtually have old lag status. The overwhelming majority of prisoners are in their twenties, because generally by the time people reach the end of their twenties they realise that that is no way to live their lives and they decide to go straight. A person who is 44 years of age and is in prison perhaps for committing an armed robbery or something else is a completely different kettle of fish from a person who has received a custodial sentence for a minor cannabis offence. Therefore, let us have no more of this talk about how we are pushing for harsh penalties or want to retain harsh penalties.

Hon Sue Ellery: Did I say that?

Hon SIMON O'BRIEN: That was the sense of what the parliamentary secretary was saying. I think the parliamentary secretary said that she rejected that notion. She did not actually say that we were saying that. Okay, I take the point. I am not being touchy about any of this.

Hon Sue Ellery: I know!

Hon SIMON O'BRIEN: The proposed new clause does not add anything even to what the Government is trying to do. When we get down to tintacks and get away from the emotional hubble and bubble about this issue and look at it analytically, it does not work either. If the Government wants to talk about this issue, my door is open. The day before the Community Drug Summit was announced by Hon Bob Kucera, the then Minister for Health, I received a call on my mobile phone from the minister telling me as a courtesy that he was about to announce a drug summit, mate.

Hon Ljiljanna Ravlich: That is pretty good. That is more than you ever did.

Hon SIMON O'BRIEN: He said that he wanted bipartisanship on this issue, mate. I have never been called mate so many times in one brief conversation in my life! I said to him that I did not know what the heck he was on about in terms of bipartisanship, but I would wait and see. I said also that if at any stage he wanted to come to see me, my door was always open for anything that he wanted to talk to me about. I can tell members that that was over two years ago, and to this day I have not had one approach - but they want bipartisanship, mate!

Hon Peter Foss: I tried to participate and they said that they would not have me there. Do you remember that?

Hon SIMON O'BRIEN: Yes. We now have this backflip and climb-down that has come in under the stewardship of the new Minister for Health, Hon Jim McGinty. I read in the paper from time to time that there is consultation with other parties, and compromise. There has been no approach by the Labor Party at all, there has been no negotiation, and there has been no compromise on this issue. This proposed new clause is a lame duck, and it should be made a dead duck. We oppose the new clause.

Hon PETER FOSS: I want to ask a question, because I know that this matter is very dear to the heart of the Leader of the House. The Leader of the House had originally spoken against cannabis deregulation, but he later

qualified it, as he explained in this House, by saying that he believed it was important that cannabis deregulation be in tandem with an increase in drug treatment and education services. I have read in the paper that the Minister for Health has cut back on funds for mental health and drug rehabilitation services in order to fund the teaching hospitals. I had heard that that had happened even before the minister made that announcement. The minister made the announcement in somewhat of a political vein by saying that it was because he did not get the money out of the federal Government that he wanted. However, I understand that he had already made those cuts prior to that time. Is that in fact the case, or does the Government have, in tandem with this move to liberalise the laws relating to cannabis, the sort of measure that the Leader of the House spoke about; namely, the ability to deal with people who have drug problems by increasing the funds for education and so forth? Is it merely a one-sided move or does the Government have a clear strategy? If there is a clear strategy and it is backed by positive moves, will the Government tell us what is that strategy? I note that it was referred to in the debate on this matter, but I want to know whether any resources are available to do it and whether the Government is able to provide cannabis-dependent people with treatment and other ways of dealing with their addiction.

Hon SUE ELLERY: The member is talking about two matters in one. I answered a question yesterday in some detail about education sessions. A system is in place to provide those sessions through the Drug and Alcohol Office and work is ongoing on the delivery of the education sessions referred to in the legislation. I am unaware of any announcement on the detail of funding for those sessions.

New clause put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon Adele Farina	Hon Jim Scott	Hon Ed Dermer *(Teller)*
Hon Robin Chapple	Hon Dee Margetts	Hon Christine Sharp	
Hon Kate Doust	Hon Louise Pratt	Hon Tom Stephens	
Hon Sue Ellery	Hon Ljiljanna Ravlich	Hon Giz Watson	

Noes (12)

Hon Alan Cadby	Hon Ray Halligan	Hon Robyn McSweeney	Hon Barbara Scott
Hon Paddy Embry	Hon Frank Hough	Hon Norman Moore	Hon Derrick Tomlinson
Hon Peter Foss	Hon Barry House	Hon Simon O'Brien	Hon Bruce Donaldson *(Teller)*

Pairs

Hon Ken Travers	Hon George Cash
Hon Nick Griffiths	Hon Murray Criddle
Hon Jon Ford	Hon John Fischer
Hon Graham Giffard	Hon Bill Stretch

New clause thus passed.

New clause 14 -

Hon PETER FOSS: Section 38 of the Misuse of Drugs Act provides for a certificate of an approved analyst or an approved botanist and section 38A provides for a defendant to obtain a copy of the certificate. Section 38(2) states -

> In any proceedings against a person for an offence, production of a certificate purporting to be signed by an approved analyst or an approved botanist stating in relation to any thing -

It goes through all the things that the certificate must state. It is a proof provision so that only the certificate, and not everything else, need be produced. It continues -

> is sufficient evidence of the facts stated in the certificate.

Section 38B(1) states -

> Section 38(2) does not apply if, not less than 21 days before the proceedings, the defendant delivers notice in writing to the Commissioner requiring the approved analyst or approved botanist to attend as a witness in those proceedings.

That section effectively has two benefits. The Commissioner of Police must know 21 days before the trial whether the witness who tested the cannabis is required to attend the trial to prove that the subject of the charge

is cannabis, its value and so forth. That would be quite useful for the trial; however, the cannabis need not be produced at the trial. A difficulty is foreseen by the police, and the amendment I will move is as a result of concerns expressed by the police. They say that they already have enormous problems with the storage of drugs. The difficulty is that the storage of drugs is not just a matter of finding space; they must be kept and accounted for as though they were gold in Fort Knox and there must be security on them. The police must virtually hold evidence in drugs cases as though it was gold in Fort Knox. Merely finding other places for this material is not very helpful.

The Cannabis Control Bill provides that a CIN is issued and an authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid. There is also a capacity for a person to insist that the police prosecute him. The person might not respond to the CIN and might not pay the penalty or attend a lecture so the police must then prosecute him. A significant period can elapse before the police can safely dispose of the cannabis that is the subject of the CIN. It seems to me that if we downplay everything so that what is issued is virtually a traffic infringement notice, but with not as many implications as a traffic infringement notice, it would be useful for the police to keep a certificate instead of the cannabis. The police are also a bit worried that they will have to get certificates on everything anyway. They are concerned that they will probably have to get loads of certificates for cannabis when people are slow in paying. The parliamentary secretary cannot tell me that people will not be slow in paying because I think some will be. Drug dealers will pay the penalty within seconds; that is the experience in South Australia. Unfortunately, one thing about cannabis smokers is that they are not very good at getting things done. A lot of people are not very good at getting things done, but cannabis smokers particularly are not good at getting things done. We have had a considerable amount of debate on the effects of cannabis and that is not in dispute. People who smoke a lot of cannabis, even a reasonable amount of social cannabis, tend to be a little less diligent in attending to their business than they might otherwise be. I think quite a few people will need more time. This has the possibility of being a fairly lengthy and bureaucratic process.

One issue that I am interested in is the ability to challenge a CIN. It is really a question of interpretation of the Bill, and perhaps I should have asked this during the second reading debate. The Bill provides that a CIN can be issued. Clause 8 outlines the content of the CIN. There can be extensions of time for and withdrawals of CINs. The Bill outlines the benefit of paying a modified penalty or completing an education session and the application of the penalties that are collected. The Bill also refers to certificate completion, enforcement and so forth. What about defending a CIN? I presume that if the Fines, Penalties and Infringement Notices Enforcement Act is incorporated, that process will allow a person to say during the course of the enforcement that he is not guilty of the offence. I do not think the Government intends for the CIN to be the be-all and end-all; that is, if a person is issued with a CIN, he does not have a chance to say that he did not have the cannabis on him. Will we deem people to be guilty as soon as they are issued with a CIN? I do not think that is the case.

We need to read the Fines, Penalties and Infringement Notices Enforcement Act so that when a CIN is enforced, the person can say that he did not commit the offence. It is fairly important that we answer that question, but I think that is right. If it is not, we may enact something that we might regret. Presuming that that is the case, somewhere along the line a person can say that, no, he is not guilty. It might be a long time down the track before that happens. If that is the case, the police are concerned that, first, they may have to send a large quantity of material off for certification and, secondly, they will have to store a lot of material in secure storage. Can the parliamentary secretary tell me what the police intend to do with cannabis that has been seized when a CIN is issued? Do they intend to keep it in secure storage and do all the things that they need to do to maintain its integrity as evidence? Do they intend to analyse it; and, if so, at what stage will it be analysed? What will they do if at some stage in the process, possibly under the Fines, Penalties and Infringement Notices Enforcement Act, somebody challenges it? Will it be worth it for people to not pay the penalty specified in the CIN and challenge it because by that time all the evidence will have disappeared, or will we have a system whereby the police hold on to all the evidence? If a person does not carry out the CIN one way or another, will we be able to prosecute those people? I move -

Page 7, after line 16 - To insert the following new clause -

14. When section 38B of *Misuse of Drugs Act 1981* not to apply

Where a CIN has been issued pursuant to sections 5, 6 or 7, then unless within 28 days after the giving of the CIN the alleged offender delivers notice in writing to the Commissioner that the alleged offender denies that the alleged offence involved cannabis then section 38B of the *Misuse of Drugs Act 1981* shall not apply to any prosecution brought with relation to the alleged offence.

Hon SUE ELLERY: I appreciate that the member was not here yesterday, but the Committee discussed this issue in some detail. Section 27 of the Misuse of Drugs Act provides that the police are required - this is what they do now and it is not anticipated that there will be any change - to hold the cannabis until they are satisfied that no-one will be tried or that the proceedings have come to a conclusion. The other question the member asked was at what point does the person have the opportunity to indicate that he wants to plead not guilty. I draw the member's attention to clause 8 of the Cannabis Control Bill, which outlines the information that is set out in a CIN; that is the information that is provided to the offender.

Hon Peter Foss: How do they make it and when?

Hon SUE ELLERY: Once the person has received a CIN, he needs to elect in writing that he will either have it heard and determined by a court -

Hon Peter Foss: Where is that in the Act?

Hon SUE ELLERY: It is in clause 8(3) of the Bill.

Hon Peter Foss: When?

Hon SUE ELLERY: When that person receives the infringement notice, he needs to advise his preference in writing. If he does not advise in writing, if he does not pay a fine or attend an education session, we rely on clause 18, which provides a range of actions that are available under the Fines, Penalties and Infringement Notices Enforcement Act.

Hon Peter Foss: But when?

Hon SUE ELLERY: The effect of clause 8 is that in the event that a person does not respond in writing that he wants to have the matter contested in court, the clock starts ticking from when the infringement notice was issued, and he then has 28 days -

Hon Peter Foss: Where is that in the Act?

Hon SUE ELLERY: In clause 8(4)(a)(i).

Hon Peter Foss: That is the time to pay it. Where is the time to give notice that he does not want to challenge it?

Hon SUE ELLERY: That is what I am trying to explain. If the person does not exercise that choice and he does nothing, he has 28 days to pay the fine or attend an education session. If he does neither of those things, clause 18 kicks in on day 29 and he is dealt with under the Fines, Penalties and Infringement Notices Enforcement Act.

Hon PETER FOSS: I have to disagree with the parliamentary secretary. Clause 18(2) states -

> A police officer may issue a final demand under section 14 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* if -
>
> (a) a CIN has been issued;
>
> (b) the CIN has not been withdrawn under section 11;
>
> (c) the modified penalty has not been paid as required by the CIN;
>
> (d) the alleged offender has not completed a CES as required by the CIN;
>
> (e) the alleged offender has not elected to have a complaint of the alleged offence heard and determined by a court; and

No time -

> (f) the time for paying the modified penalty or attending a CES has elapsed.

How will he know whether he will not elect to lodge the claim? There is no time limit on when he can elect to have it tried by a court. How can his capacity be cut down if it is not in the Act? It cannot be done by regulation, because regulations must not be inconsistent with an Act; they must be consistent with an Act. Unfortunately I do not currently have a copy of the Fines, Penalties and Infringement Notices Enforcement Act. If I remember rightly, the Act provides a person with some capacity to challenge and to say that he wants a matter to go to court. I am wondering how the person can find the time in clause 18(2) - when he then becomes eligible to do it - when there are no time limits. I will give the parliamentary secretary one thing: nothing actually says he has an election. That is one argument. Clause 8 states that he will be advised he has an election, but it does not say he has one. That is probably another little problem. Normally a right of election is created in one clause, and another clause creates an obligation to tell people about their rights. No clause in this Bill gives a person that right. He must look somewhere else to find it. That right is in the Fines, Penalties and Infringement Notices Enforcement Act, section 21(1) of which states -

Despite any other provision in this Part, at any time that is -

(a) after an infringement notice is registered . . .

(b) before the modified penalty and enforcement fees, or any part of them, is paid; and

(c) before a time to pay order is made under section 27A(4),

the alleged offender or the prosecuting authority that registered the notice may make an election.

Does the parliamentary secretary believe that that applies; and when is the last opportunity that a person has to exercise that election?

Hon SUE ELLERY: Various sections apply under the Fines, Penalties and Infringement Notices Enforcement Act. Section 21 of that Act provides that once the infringement notice is registered, either the offender or the prosecuting authority may make an election.

Hon Peter Foss: Yes; that is what I said.

Hon SUE ELLERY: I did not understand Hon Peter Foss's question.

Hon PETER FOSS: I am not sure where the 29 days comes from. After that it is too late for an offender to elect. I think there is a problem with the drafting of the Bill because no time limit is provided for this situation. If it is to make sense, the time limit must be that which is contained in part 3 of the Fines, Penalties and Infringement Notices Enforcement Act. An offender does not have to elect before the 29 days; he can elect at any time before doing something.

Hon Sue Ellery: That is correct. However, if an offender has not done the other things, certain things kick in later.

Hon PETER FOSS: They kick in, but a prosecution might still be brought months down the track. An offender does not have to wait 29 days to find out whether there will be a prosecution. He might have to wait a year. The question I am raising is how long must the police hold on to the cannabis.

Hon Sue Ellery: Until the matter is finally completed in court. That is clear.

Hon PETER FOSS: Exactly. That is what concerns me. This new clause would deal with that. Under this legislation, a lot of CINs will be handed out and they will undergo a fairly basic delay. Most possession cases are dealt with in court within a short period. That is how they work. The police might be able to tell me the average time between when a possession case is brought before a magistrate - assuming an arrest has been made - and a hearing. I suspect that most of those are not challenged hearings so a quick plea of guilty is made. Most of them are probably over in three days. The situation in which simple cannabis offences are dealt with by the court in three days and the cannabis disposed of will change to one in which fines enforcement cannot be registered before 29 days, followed by all sorts of other procedures, all of which provide an opportunity for the person to delay it and finally to say that he elects to have it heard in court. It could be months down the track before somebody says he elects to have his case heard in court. A summons must then be issued and then served. The case will then have to wait for a hearing. People who are charged with cannabis possession are often in custody because they have been arrested for something else. They are dealt with very quickly. A person is arrested, seeks bail or the renewal of bail the next day and pleads guilty; the case is out of the way; and the police can get rid of the cannabis. This system will lead to far more people being charged on summons. It could be ages before their case goes before the court. It will not receive priority because the person is not on bail and will be subject to being served a summons. The person will not be there to be charged; he must be found. That will be fun. Theoretically, the police must hold onto the cannabis until section 21 of the Fines, Penalties and Infringement Notices Enforcement Act has been satisfied. The period is after the infringement notice has been registered, before the fee is paid or before a time-of-pay order is made. A person can elect to go to trial at any time. A process must also be established to let the police know that all those things have happened.

The present drafting of the Bill has the potential to make the process very difficult. I am asking whether the Government has thought through this issue. I have raised it because the police raised it with me with great concern. What has the Government done to address the problem? Is it correct that under normal police procedures the cannabis will be held until such time as the matter is disposed of? Are most cannabis possession cases now dealt with very rapidly after a charge? Is it correct that cannabis in small quantities does not have to be held for a long time? Has the Government taken into account that many more quantities will be required to be held for a much longer period just in case somebody elects to go to trial under section 21 of the Fines, Penalties and Infringement Notices Enforcement Act?

Hon SUE ELLERY: The Government gave consideration to whether there would be an impact on the police in light of the storage capacity. The proposition put during those deliberations was that the police have the right to deem a matter effectively to be cannabis and therefore proceed to destroy it. We could not go down that path because that would deny the person charged the right to challenge that deeming process. Consideration was given to the issue and that is why we have taken the path we have taken.

Hon PETER FOSS: I understand that. It is a difficult problem. In fact, I was concerned to see what the Government would do. However, the Government cannot ignore the reality of what that now means. Does it mean that the police will hold cannabis until a person has paid the cannabis infringement notice? If a person gives notice of his election, will it be held through until the end of the trial?

Hon Sue Ellery: Yes.

Hon PETER FOSS: Given that, will the parliamentary secretary give me some idea of the usual handling of cannabis that has been the subject of a minor possession charge? Am I correct in saying that a large number of these people are charged on arrest and that the matter is handled within a short period thereafter?

Hon SUE ELLERY: I am not sure that I can provide the level of detail the member wants. A range of circumstances could apply in which the matter would be dealt with more quickly than in other circumstances. I am not a position to give that kind of detail.

Hon PETER FOSS: I am sure that is correct. I am sure that a policeman who regularly deals with this area could tell the parliamentary secretary in short measure that pleas of guilty are made with most minor possession charges within a couple of days of the charge being laid. I am not saying alternatives are not available, but that applies in most cases.

Hon SUE ELLERY: Yes, that is correct.

Hon PETER FOSS: If that is correct, it would follow as a matter of course that under the current system officers find out within a couple of days whether to dispose of the cannabis seized. It may take months to find that out under the future system, particularly with people who are not too good at paying their CINs.

Hon SUE ELLERY: The current cautioning system is exactly the same as that proposed. It may or it may not vary in time, depending on the circumstances.

Hon PETER FOSS: There is a slight difference between the current cautioning system and the proposed system. First, under the current system, police normally have no time limits imposed on them.

The DEPUTY CHAIRMAN (Hon Barry House): Could members keep down the audible conversation in the Chamber? It is off-putting to members engaged in debate, and for Hansard, too, I am sure.

Hon PETER FOSS: Under the current system, no time limits are imposed on people. At any stage, they can proceed with a matter. They usually act quickly because people know they have only one or two chances, so it is worth doing. Under the proposed system, people have almost an indefinite period to spin it out using the processes of the Fines, Penalties and Infringement Notices Enforcement Act. People will know there is a good chance that if they wait a period of time before electing, they will probably lose that opportunity. People will not necessarily behave in the same way with the new system as they do under the current system. The new system will be more bureaucratic. Once the CIN is issued, it will not be in the hands of the police. It will move across to the Fines Enforcement Registry. Police would not have a quick control of the matter. Once the CIN is issued, it would go through the system and it may be months, if not nearly a year, before the message returned that the person elected to go to court. Has the parliamentary secretary planned for the increase in the amount of cannabis for the police to store? If the Government has planned for it, what are the plans; and if not, why not?

Hon SUE ELLERY: The member is talking about a somewhat hypothetical proposition. Certainly, the Government's view is supported by evidence from other jurisdictions where infringement regimes apply. Small amounts and small numbers of offenders are involved in this matter. I am advised by the police that existing storage facilities will be adequate.

Hon PETER FOSS: The fact is that the Government has not planned for this increased storage. It has assumed that the existing facilities will be sufficient.

Hon Sue Ellery: That's not true.

Hon PETER FOSS: The parliamentary secretary told me the Government does not believe it will happen; it has worked on the basis it will not happen. The parliamentary secretary said that the storage system is sufficient. My information from police is that the existing storage system is totally inadequate. My proposed new clause is not as the parliamentary secretary believes, but is designed to put a time limit on people's denial that the substance was cannabis. It relates to only one element of the offence. It does not change the burden of proof

generally. It states that people have 28 days. If they do not state in 28 days that it was not cannabis, the certificate becomes conclusive proof. It would then be appropriate for the Commissioner of Police to authorise the destruction of the drug.

This seems to strike the appropriate balance between the interests of the prosecution and the interests of the defence. It will make the task of police considerably easier with storing cannabis. I do not want to make it possible for canny cannabis users to exploit the system by taking their CIN, waiting a period and then saying, "I elect to go to court." Police will give up by that stage if they must go through all that performance. If the system is exploited, problems will arise. I do not see any offsetting problems with my proposed new clause. It will make life simpler for the police. I am keen that police should not be given an extra burden through the Government's measure. Police should not have administrative difficulties. I propose that section 27(2) of the Misuse of Drugs Act not apply unless a person denies that cannabis was involved in the offence. A certificate will be conclusive proof. If it is decided in those circumstances to proceed, it will still be up to the police to determine what they will do. If they want to keep the cannabis and keep a certificate, they can do so. The proposed clause does not compel police to get a certificate or do anything. At least it will give the police the option once they decide to go after a person to immediately get a certificate and get rid of the cannabis. I urge the Government to agree to the amendment that will assist the police considerably.

Hon SUE ELLERY: The Government is not prepared to support the proposed new clause for some of the reasons already outlined. Also, it believes it would not have the effect the member intends. Section 27 of the Misuse of Drugs Act would still apply.

New clause put and a division taken with the following result -

Ayes (12)

Hon Paddy Embry	Hon Frank Hough	Hon Norman Moore	Hon Bill Stretch
Hon Peter Foss	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Ray Halligan	Hon Robyn McSweeney	Hon Barbara Scott	Hon Bruce Donaldson *(Teller)*

Noes (13)

Hon Kim Chance	Hon Dee Margetts	Hon Christine Sharp	Hon Ed Dermer *(Teller)*
Hon Robin Chapple	Hon Louise Pratt	Hon Tom Stephens	
Hon Kate Doust	Hon Ljiljanna Ravlich	Hon Ken Travers	
Hon Sue Ellery	Hon Jim Scott	Hon Giz Watson	

Pairs

Hon George Cash	Hon Nick Griffiths
Hon Murray Criddle	Hon Jon Ford
Hon Alan Cadby	Hon Adele Farina
Hon John Fischer	Hon Graham Giffard

New clause thus negatived.

Postponed clause 8: Content of CIN -

Resumed from 9 September after the clause had been partly considered.

Hon DERRICK TOMLINSON: I would like the parliamentary secretary to comment on a couple of small matters. Within a period of 28 days, a person upon whom a cannabis infringement notice has been served may pay the modified penalty or complete a cannabis education session. Clause 10, which has already been passed, allows an authorised person to extend that 28-day period for both those measures. It was established yesterday that the authorised person has discretion to allow a reasonable extension of time. I would have preferred that some finite period be specified, but the Government's position was that it can trust the authorised person to impose or allow a reasonable extension, and who am I to not trust the Government?

The parliamentary secretary gave an eloquent explanation of the cannabis education session in her reply to the second reading debate. She earlier suggested that I read it. I must admit that my copy is a bit crumpled from being under my pillow the other night. The parliamentary secretary said -

> A session consists of a single one and a half to two-hour education session. Each session consists of pre-intervention evaluation; information on the harms associated with cannabis use; motivational interviewing - that is, trying to get the participants in the session to explore and make decisions about

> changing their drug use; setting goals and action plans; information on other services; and referrals when appropriate.

The parliamentary secretary then described the qualifications of the drug treatment service providers. She said that an evaluation indicated that these programs, which were developed by the previous Government, were satisfactory. In spite of that, it seems that we will set up a new training carpetbagger industry. However, that will be the process. That explanation did not clarify whether the sessions would be held on a one-on-one - that is, between a trainer and a "CIN-er" - or group basis. The reference on page 10062 of *Hansard* is to "trying to get the participants in the session"; that is, plural participants. Will it be a one-on-one session or a group session?

Hon SUE ELLERY: I thought I indicated that in the speech the honourable member referred to. I further indicated yesterday when we had some discussions about the education sessions that it could be either. It will depend on the particular circumstances. For example, a session held in a smaller community might be done on a one-on-one basis. It will depend on the particular circumstances.

Hon DERRICK TOMLINSON: The other day the parliamentary secretary provided a list of the regional areas. The great southern area will have outreach to Denmark, Katanning and Walpole. I think that in Denmark and Walpole there is propensity for a large number of "CIN-ers" and therefore frequent CESs.

In the south west, with outreach to Margaret River and Manjimup, again there would be the propensity for a large number of "CIN-ers"; therefore, there would be a propensity for a large number of CESs. In the wheatbelt and Northam I suggest the drug of choice is probably not cannabis; therefore, there would be infrequent CESs. In the goldfields again I think they would be infrequent. In the mid west and Geraldton, I suggest there would be some propensity in Geraldton. In the Pilbara, depending on how rigidly the mining companies enforce drug testing for their employees, there would certainly be considerable propensity. In the Kimberley, even though the use of ganga is quite endemic I suggest that very few CINs would be given because the people there would not be issued with a CIN but would be charged with a minor offence simply because they are Aboriginal. There will be considerable differences among the regions. There will be considerable differences even in Perth. In Perth, because of the density of the population, only the very dense ones will be caught with cannabis. The parliamentary secretary has told us that a cannabis education session may be a one-on-one or a group session. However, economics would suggest that the sessions would not be run until there was a sufficient number - a sufficient "CES-pool"- of "CIN-ers".

We then get to the matter of the 28 days. A person who is issued with a CIN must complete a CES - not nominate for a CES - within 28 days. Of course, the safeguard is that the person may apply for an extension of time. If a person who nominates for a CES cannot complete the CES within 28 days because he is waiting for the pool to be of sufficient size, the 28 days can be extended. Am I correct in my assumption so far?

Hon SUE ELLERY: We had some discussion about this matter yesterday. I said yesterday, and I will say it again today, that the availability of an education session, whether it be for one person or 27 people, may be a reason for a person to seek an extension of time. If the reason that the person is seeking an extension of time is that he has not been able to attend an education session in his area, then an extension of time is likely to be granted.

Hon DERRICK TOMLINSON: That is perfectly reasonable. That is surely one of the reasons for having clause 10 in the Bill. The parliamentary secretary said during the second reading debate, at page 10062 of *Hansard* of 15 August -

> Importantly, there has already been an initial evaluation of the education system and it has indicated a positive impact. There was a significant shift in the perception that cannabis is not a safe drug.

Did that evaluation include an enumeration of the time between the issuing of a CES and the completion of a CES?

Hon Peter Foss: The issuing of a CIN.

Hon DERRICK TOMLINSON: No. We are not talking about CINs. We are talking about the previous system, when there was the caution and the CES.

Hon SUE ELLERY: The evidence from the evaluation was that the majority of people would attend a CES within 21 days.

Hon DERRICK TOMLINSON: Would the parliamentary secretary please repeat that. I am being distracted by the conversation on my left.

Hon Sue Ellery: The evidence in the evaluation was 21 days.

The DEPUTY CHAIRMAN (Hon Barry House): Order! There are two many side conversations in the Chamber, which is distracting the members who are involved in the debate. That has happened quite a few times today. If members want to hold a conversation would they please take themselves to the back of the Chamber.

Hon DERRICK TOMLINSON: There will be 21 days between the cautioning and the education system. That is commendable. We now have the situation in which a person will be given 28 days after receiving a CIN to complete a CES. If on the twenty-eighth day a "CIN-er" nominates for a CES, on average he will have another 21 days. If the situation is the same as under the current cautioning system, he will have a total of 49 days.

Hon SUE ELLERY: No.

Hon DERRICK TOMLINSON: I would like to hear the parliamentary secretary's explanation of where my sums are wrong.

Hon SUE ELLERY: If the person elects to do a CES he will have 28 days to complete it.

Hon SIMON O'BRIEN: From when?

Hon SUE ELLERY: The person must complete an education session within 28 days from the date the infringement notice is issued.

Hon DERRICK TOMLINSON: I see; so on the very day of the issuing of the CIN, or no later than seven days after the issuing of the CIN, the person has to make an election for a CES so that he can complete the CES within the 28-day period, because the experience indicates that the average is 21 days.

Hon SUE ELLERY: I refer the honourable member to subparagraphs (i) and (ii) of subclause (4)(a). The clock will start ticking for a fine or an education session 28 days after the issue of an infringement notice.

Hon Simon O'Brien: Which is given 21 days after the offence.

Hon SUE ELLERY: An infringement notice will be issued on the spot to the majority of people. If there were some -

Hon Ray Halligan: What about a minor?

Hon SUE ELLERY: The member should let me answer the question. There may be a question of identity or another question, but I am advised by the police that by far the majority of infringement notices will be issued on the day the offence occurs.

Hon DERRICK TOMLINSON: I also made that assumption. On day one, when people are presented with a cannabis infringement notice, they will have 28 days to do one of three things. They will probably have 29 days because it will be that day plus 28 days; however, let us assume it is that day plus 27 days when the clock starts ticking. They could either defend the notice; they could pay the modified penalty, which I suspect many will; or they could recognise the need to see the error of their ways and elect to do a cannabis education session. However, they will have 28 days in which to complete the CES. Some will immediately register with a nominated service provider and complete the CES within 28 days.

What about young Clem Kadiddlehopper who presents himself at a service provider on day 28 to complete a CES? Poor old Clem Kadiddlehopper is told, "Look, Clem, you are a good boy. You have turned up within the 28 days but we are waiting for a sufficient number of "CIN-ers". Will there be a session every day?

Hon Sue Ellery: No. If he has not completed it within 28 days and has not sought an extension -

Hon DERRICK TOMLINSON: But he has gone along to a service provider and said, "I am here; I have 28 days to make this decision."

Hon Sue Ellery: No, he has 28 days to complete it.

Hon DERRICK TOMLINSON: I know that is what the clause says.

Hon Ray Halligan: It could be a two-hour session, couldn't it?

Hon DERRICK TOMLINSON: Hang on, let us not get involved in that.

I am suggesting to the parliamentary secretary that Clem Kadiddlehopper could present himself on the twenty-eighth day for a session and be told that no CES is available on that day. He then, quite reasonably, under clause 10 would be given an extension of time until a CES became available, which could be any time within 21 days after day 28. Although the word "complete" is clear in the Bill, given the provision in another clause, some people will not complete the session then and will not get a CES certificate until 49 days has lapsed.

Hon SUE ELLERY: That is possible.

Hon DERRICK TOMLINSON: Now -

Hon Peter Foss: Keeping track of this will be fun.

Hon DERRICK TOMLINSON: Keeping track of it will be fun. It will become fun also when it is applied to the argument that Hon Peter Foss has just lost.

I am not talking about 28 days to complete a CES; I am talking about the possibility and the probability of 49 days. The further away from densely populated areas a CES is operated, the further will be the increase in that probability. Whether it be a one-on-one session or a group session, a CES will operate less frequently in those areas; the economics to service providers of providing the service will dictate that.

Completion of a CES within 28 days will become a difficult proposition for the poor "CIN-er" and extremely problematic for the administrators of the system. It will also be problematic for the reason I presented yesterday; that is, for justice to be done there must be a minimum time between the commission of an offence, the service of an infringement notice and the imposition of a penalty. That is particularly true of a system that is intended to be behaviour changing. I am talking about not necessarily aberrant behaviour, but behaviour we want to change. Quick remedial action must be imposed while the misbehaviour is fresh in the mind of the "CIN-er". The further away the event and remediation, the less successful the remediation will be.

What will happen to little Clem Kadiddlehopper, who has been waiting to have his behaviour changed, on the forty-ninth day after committing an offence under this Bill? He has been waiting to be told that cannabis is harmful and to be motivated to explore and make decisions about changing his drug use. In the meantime, if Clem is a persistent user, he will probably have committed the offence another 49 times.

Hon Peter Foss: He's probably forgotten about it.

Hon DERRICK TOMLINSON: He has probably forgotten about it along the way.

This is another befuddled clause of the Bill. It looks good, it sounds good, but it is very confused. I will make the prediction now that it will not achieve the Government's intention and in two years the new Government will amend this Bill to make it workable.

Hon SUE ELLERY: I move -

Page 5, line 8 - To insert before "A" -

Unless section 9 applies,

The effect of the amendment to clause 8(4) is to make it clear that the options for dealing with a cannabis infringement notice set out in that subclause do not apply to infringement notices to which clause 9 will now apply.

Amendment put and passed.

Hon SIMON O'BRIEN: In establishing the machinery to back up what is set out in clause 8, what resources will be applied to this task, and specifically manpower? There is a range of resources. Can the parliamentary secretary give me an overview? If after that I need to ask further questions, I will.

Hon SUE ELLERY: I am advised that there will be initial set-up costs and an additional level one full-time equivalent.

Hon SIMON O'BRIEN: Is that one FTE to set it up or one on an ongoing basis?

Hon Sue Ellery: Ongoing.

Hon SIMON O'BRIEN: What about additional time resources? How much time will officers have to spend in follow-up on these matters? Will that be taken care of by one FTE, or will other police officers across the State have to involve themselves in the follow-up of all sorts of matters, be it fines enforcement, court appearances, giving advice, tracking down people who have not done cannabis education sessions and the like?

Hon SUE ELLERY: I am advised that there will be no further role for the police to play once they have issued an infringement notice. However, if the person elects to go to court, the police will be required to do the same work they do now for matters that go to court. The additional work in managing the infringement that will occur once an infringement notice has been issued will be done by the additional FTE.

Hon Simon O'Brien: Does that include fines enforcement?

Hon SUE ELLERY: Fines enforcement will be handled by Department of Justice resources, not police resources.

Hon SIMON O'BRIEN: I am interested to know whether it is Department of Justice resources or police resources because one of the prime considerations of and arguments put forward by the Government is that this decriminalised cannabis regime will save police and justice resources. Can the parliamentary secretary please indicate whether that will be the case?

Hon SUE ELLERY: I am advised that no work has been done in determining costs. There is a reason for that. There were costs associated with the South Australian system, and our system is fundamentally different in, for example, identification and other issues. Issues arose within the fines regime that applies in South Australia. We do not anticipate that happening in Western Australia because we have made significant changes to the South Australian system.

Hon Simon O'Brien interjected.

Hon SUE ELLERY: I just talked about them in terms of identification.

Hon SIMON O'BRIEN: I do not think there is much more about this to be discussed, but I will make one point before we go on. The south London district of Lambeth introduced a system whereby police effectively did nothing about minor cannabis offences. That is basically how it panned out; it did not replace the system with CINs and CESs, paperwork, and fines enforcement agencies. There was none of that; it just did not worry about it. That was the policy. It saved on average - I have produced the figures during debate this week - less than two hours per officer per year. There is not a policeman in all of Western Australia or in any other police jurisdiction on earth who does not waste substantially more than two hours in an entire year doing all sorts of things during the day - having a chat with the bloke at the counter, having a quick read of the newspaper or stopping off at the shop to buy a pie. That is what we are talking about here. This system has unspecified, undetermined and unmeasured costs, not only in dollars but also in manpower, that will accrue, which clearly will offset the sorts of benefits that have been demonstrated anywhere else, which are very minor indeed. It is worth noting that one of the pillars upon which the Government bases this policy once again is seen to have feet of clay.

Clause, as amended, put and passed.

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

Hon SUE ELLERY: I move -

Page 9, after line 2 - To insert -

(1) This section applies subject to section 9.

This amendment will have the effect of linking the fines enforcement section of the Fines, Penalties and Infringement Notices Enforcement Act to the provisions in clause 9.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

As to Report

HON SUE ELLERY (South Metropolitan - Parliamentary Secretary) [1.00 pm]: I move -

That the report be adopted.

Point of Order

Hon PETER FOSS: The question has to be that the adoption of the report be made an order of the day for the next sitting of the House.

The DEPUTY PRESIDENT (Hon Simon O'Brien): Because the Bill has been amended, the options now are to seek leave to proceed or to move that the consideration of the committee report be made an order of the day for the next sitting of the House.

Debate Resumed

Questions put and negatived.

Hon SUE ELLERY: I seek leave to proceed through the remaining stages of the Bill at this day's sitting.

Leave denied.

On motion by Hon Sue Ellery (Parliamentary Secretary), resolved -

That the adoption of the report be made an order of the day for the next day's sitting.

Sitting suspended from 1.01 to 2.00 pm