

**PROTECTIVE CUSTODY BILL 2000**

*Second Reading*

Resumed from 11 May.

**HON HELEN HODGSON** (North Metropolitan) [7.52 pm]: This Bill has been around for a little while and members have had the opportunity to look at it. Basically, the Australian Democrats will support the Bill, although we have a few concerns about the way in which it approaches the issue of taking care of people for their own safety and wellbeing. If one looks at the definition in *The Pocket Macquarie Dictionary*, to protect somebody is to defend or guard that person from injury or danger. Therefore, that should be the aim of this legislation. We are looking for the best way to protect people from the dangers they might encounter through being intoxicated or incapable because they are under the influence of alcohol or drugs. The intention is that it is not only to protect the general public from the danger that may be caused to them but also to protect the person who is intoxicated or affected by drugs.

Currently, the Police Act gives the police power to take alcohol-affected people into protective custody. This Bill goes further than that because it also includes other drugs. We regularly hear stories about people doing things under the influence of drugs. This morning when I was listening to talk-back radio, I heard a woman talking about some children on a bus - I think she said the girl looked like she was about 12 or 13 years old - ingesting solvents. We do not want that sort of behaviour to proliferate. However, we must find the right and best way to deal with people who are under the influence of such intoxicants and to make sure that the community is protected from them and that they are protected from themselves.

In general terms, we support the need for these people to receive care. However, we also think that we should go further and provide assistance to ensure that they are able to make decisions about their future and their use of those intoxicants. Taking people off the street and locking them up may protect them in the short term, but it will not stop them in the long term from doing exactly the same thing again. Therefore, we must make sure that the cycle is broken for those who are addicted or who behave in an antisocial manner through the use of drugs and intoxicants.

The Australian Democrats believe that the legislation does not go far enough in addressing the fundamental health concerns raised by this issue. Many of those who will be affected by this legislation will suffer addiction, depression, dysfunction, family breakdown and other medical problems, which are all part of the cycle in which many of these people are caught. We believe that because this is primarily a health matter, health information should be made available to people when they are taken into custody, and support information and options that will assist them with their substance problems should be made available when they are taken to a facility. This is probably the crux of the problem, as we see it. Not enough of these facilities are available in Western Australia - I was going to say in the metropolitan area because that is what I am most familiar with, but it is even worse in the rural and remote areas. There are not enough facilities to cater for these people who are apprehended and taken into protective custody. We are concerned about the ability to take people into lockups and about the way those lockups will be used when other appropriate facilities are not available. However, I will come back to that shortly.

We note that the legislation applies to both adults and juveniles, although there are slight differences in their treatment. We have concerns about the way in which children are dealt with. I note the amendments made in the other place. Those amendments have made the arrangements regarding juveniles more palatable. However, we still have concerns.

The Australian Democrats will support this legislation in principle, but I wish to address a couple of the concerns that were brought to our attention as we worked on this legislation. To begin, the people who will mainly be administering this legislation will be authorised officers - generally, they will be police officers. We are concerned once again about the extension of police powers as a result of this legislation. Police already have a large number of discretionary powers. Those contained in this legislation are very expansive, because they provide police with the ability to detain people or to restrict people's freedom of movement for as long as they consider necessary. Although police officers do an excellent job in most cases, they are not always trained to know when a person is suffering health problems. That is one of the reasons for the problems we have had - I was going to say in the past, because I will come to the Royal Commission into Aboriginal Deaths in Custody in a moment. It reported extensively on the problems of people being detained in lockups. These problems still occur today. Unfortunately, even one case is too many, but every so often a person who has been detained dies in custody. We do not want to see an increase in those cases. That is why we believe this needs to be treated as a medical matter and that medical treatment should be available.

There is little to protect individuals against abuse of power by authorised officers. We are confident that the vast majority of officers do not abuse these powers. However, we are still concerned about the occasions when things go wrong. We are concerned that in those situations we are dealing with people who are presumed to be incapacitated and not competent to make certain decisions. As a result, some matters of natural justice are not adequately addressed in the legislation. During the committee stage I will address this in more detail and I will air a number of issues.

The question of Aboriginal deaths in custody is significant because of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. A number of recommendations were made. First of all, we were told that we should do whatever we can to prevent people being taken into custody and being locked up. That is why we should have facilities, other than lockups, to deal with these sorts of situations.

People should not be locked up because of public drunkenness. The problem is that there are not enough sobering-up shelters or appropriate places to take people for treatment and care when they are in a state of drunkenness in public.

From my discussions with people in the Aboriginal community, I know there is a great deal of concern about the number of Aboriginal people who are affected by substance abuse. Many of them believe they need to be taken off the streets, dealt with by authorities and cared for in some way. Very few people agree that the way in which to do that is to put them into a police lockup. One of the difficult issues raised in this legislation is the perception that as long as people go into appropriate care and receive appropriate attention, everything will be okay. However, putting people into lockups and into the care of police, is contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Hon Peter Foss: Would you rather leave them on the streets?

Hon HELEN HODGSON: Had the Attorney General been listening, he would have heard me say that many people do not want them left on the streets, including me. He must not accuse me of saying that I want intoxicated Aboriginal people left on the streets.

This legislation has the potential to impact disproportionately on Aboriginal people. We need to address once again the public health issues of why so many Aboriginal people are intoxicated in public areas. We need to ensure that proper advice, care and information is given to stop the cycle of abuse. We need to provide adequate alternatives to prison cells and police lockups. We need to make sure that adequate funding is provided for appropriate places, such as sobering-up facilities, and shelters for the homeless and juveniles. We do not want the problem to be moved off the streets and into the lockups. We need to deal with the root cause of the problem. Much improvement has occurred in this area over the past few years, but still more needs to be done. Lockups should only ever be used as a last resort. We also need to ensure that people receive proper care when they are locked up as a temporary measure.

The Australian Democrats have some concern about the power given to police officers to apprehend and detain. The use of reasonable force is a very subjective test to be judged by the police officer or authorised person who is detaining the intoxicated person, particularly when it is not necessary for a criminal offence to be involved. It is a very grey area in which the Police Force is operating. An intoxicated person is often far more easily aggravated and less rational, which can lead to an inflammatory situation because the likelihood of resistance is increased. This could result in physical harm to the individual.

When the minister responds perhaps he will answer the question about the use of handcuffs when a person is not under arrest. How far will the authorised officer be allowed to go when restraining a person to take that person into protective custody? Such questions raise concern. We need clarification of the statement that a person taken into custody is not to be charged with any offence. Is the restriction applied only until the time of the person's release; in other words, if the person has been taken into protective custody, but there is a suspicion he has committed an offence, can he be taken in, looked after, sobered up, released and then the next day arrested and charged with the offence he was originally suspected of committing? These grey areas need to be clarified at the committee stage.

The potential charges are numerous when dealing with an intoxicated person; for example, disorderly conduct, indecent language, and hindering police. The Australian Democrats consulted the Western Australian Youth Legal Service about this Bill, which said that in its experience a person who is taken into custody for intoxication can react negatively in a way that could result in such charges. What is the situation? Can the person be charged with other matters that relate to hindering police officers in their duty, when he has resisted detention because he is not fully aware of what is going on and does not want to be taken into custody? Such individuals could become criminals simply by being detained as a result of the provisions of this Bill. There should be no prospect of charges in such a situation, because the Bill is meant to provide for the protection and the health of the

individual and is not intended to put yet another person into the criminal justice system. If criminal charges can be laid for anything to do with the circumstances of the detention, we shall be setting up a situation in which substance abusers will be caught up in the criminal justice system.

The Bill provides for community officers to be appointed. What training will they receive for dealing with intoxicated persons without resorting to physical violence? It is absolutely essential that thorough and appropriate training be given and that proper screening be undertaken to make sure that community officers are properly qualified and are capable of dealing with the difficult circumstances in which they may find themselves.

The Bill contains search powers. We can understand the need for that provision because of the possibility of self-harm or harming other people when in custody. Although the Bill states that no charges will stem from protective custody, if a person is searched and certain illegal substances are found - for example, cannabis or concealed weapons - and the seizure of the prohibited substance or concealed weapon is the direct result of the custody, what will happen? Will charges be laid? I am not in any sense condoning people carrying illegal substances or concealed weapons, but at the same time a person apprehended for protective custody could be subject to charges with far more serious consequences. I again stress that the focus of this legislation should be on a person's health and protection, and not on finding out if any other criminal acts are involved.

There should be a duty to inform individuals of their rights while in custody, and to explain to the greatest degree possible the procedures and steps involved in the protective custody process.

Hon Peter Foss: Are you suggesting that Aboriginal patrols will have to do this?

Hon HELEN HODGSON: I have not mentioned Aborigines in the past five minutes.

Hon Peter Foss: Aboriginal patrols do this. It is important to bear in mind who must carry out the provisions of this legislation.

Hon HELEN HODGSON: I have already said it is important that appointed community officers have the appropriate training and understand exactly the limits of their responsibility.

Even though an intoxicated person may not initially understand what is going on, it is essential that the person has his rights explained to him, so he knows what he can do at a later stage. People have told me that when they have been arrested for drunk driving, although they may have deliberately not responded to the police in a positive manner, they have still heard and understood everything that was going on. We cannot assume that because a person is intoxicated, he is not capable of understanding when he is told his rights. It is absolutely essential that people be informed of their rights under this legislation, so they can respond in an appropriate way if something happens.

Release procedures are a very significant issue in this Bill. The Australian Democrats are concerned about the provisions for the release of a child to a responsible adult. How do we know who is a responsible adult? In most cases it would be reasonable to assume that a close family member is able to take the child, but in very many instances the person who could be assumed to be responsible would not be an appropriate person to take care of an intoxicated child. For example, family abuse or other dysfunctional family issues are often the reason the child is in the cycle of drug abuse. How does someone work out whether the adult concerned is a responsible adult? It is of concern to the Australian Democrats that the child will not have any say in which adult the police will notify and contact. That should be further considered and teased out at the committee stage. As a result of the way the legislation is drafted, the police officer must make a judgment on whether to contact the child's parent or another close blood relative or whether to listen to the child and contact somebody else. It is a very difficult situation. I am not saying that there is an easy answer, but it needs to be explored a little further.

In contrast, an adult can object to being released into the custody of a particular individual. The situation could arise in which a 16-year-old who is trying to deal with an abusive family situation is sent back to that family; whereas an 18 or 19-year-old can say that he will not go with that person and other arrangements must be made. There is also no appeal mechanism for a child when the officer refuses to release that child into the care of a certain person; however, an adult has access to that appeal mechanism. All these issues raise questions of balance on whether a child can make these decisions. To some extent that will also depend on the degree of intoxication. There are many social issues involved, with which the police should not have to deal. We should also ensure that natural justice is adhered to in a way that ensures the child is heard in these situations.

It is a very difficult concept to deal with. Essentially, this legislation is trying to deal with the health and social issues of public intoxication. In that process there is an unavoidable infringement of people's civil liberties. It is a question of finding the balance; to what extent is the intervention justified and to what extent is the infringement of people's liberties justified to look after them and protect their health and welfare?

The Australian Democrats agree with the thrust of the legislation. We think this legislation needs to be in place to ensure that the current police powers to deal with those affected by alcohol are extended to include other substances that are regularly abused. We will not object to the thrust of the legislation. However, we think some issues should be teased out a little further at the committee stage. I have flagged some of those this evening, so I will be interested to hear the minister's response at the appropriate time.

**HON GIZ WATSON** (North Metropolitan) [8.13 pm]: I will make a few comments about this Bill on behalf of the Greens (WA). In the same vein as Hon Helen Hodgson, we accept the general thrust of this legislation and acknowledge that intoxication does not involve just alcohol; numerous licit and illicit substances can cause intoxication and antisocial behaviour. We understand this Bill is intended to deal with people in that state of intoxication in a way that takes them away from harm to both themselves and other members of the public.

I have a few comments and criticisms to make about some aspects of the Bill, the first of which is the options for places of detention. At this stage it seems that the places of detention available are either a police station or lockup or, in the case of a young person, the appropriate facility is the Rangeview Remand Centre in the metropolitan area, or a police station or lockup in country areas.

Hon Peter Foss: No. This is a nonsense!

Hon GIZ WATSON: I invite the Attorney General to clarify that when he responds.

Hon Peter Foss: What do you think happens with drunk people now? Do you have any idea?

Hon GIZ WATSON: I simply raise the issue, and perhaps the Attorney General will respond when I finish.

On reading the Police Act, we found that the police already have substantial powers to deal with people who are intoxicated or behaving in -

Hon Peter Foss: With alcohol. We did that before.

Hon GIZ WATSON: With respect, it does not necessarily have to involve alcohol.

Hon Peter Foss: Yes, it does.

Hon GIZ WATSON: Parts of the Police Act that include disorderly conduct, indecent language, threatening behaviour or resisting arrest are available.

Hon Peter Foss: It is trying to decriminalise it. You can do that with people under this, but you will end up charging them. They will end up in the lockup under that.

Hon GIZ WATSON: My understanding - I am open to correction - is that a charge of disorderly conduct is not related only to intoxicated persons.

Hon Peter Foss: No, but we are trying to stop people being charged as a result of intoxication. That is the recommendation of the Royal Commission into Aboriginal Deaths in Custody; that is why we have done it. It has dropped deaths enormously. We are trying to extend it so we do not kill off people who have been picked up for other reasons.

Hon GIZ WATSON: The second concern is the matter of reasonable force and how that is defined. The concern is about the authorised person detaining someone and that person's ability to use reasonable force. The definition of "reasonable force" is always an area of concern. Hon Helen Hodgson said that those who are apprehended under this new legislation, particularly juveniles, should know their rights while they are detained. It is my understanding that Hon Helen Hodgson has tabled amendments to address some of those concerns which we think should be considered.

Our main objective is that a person detained on the ground that he or she is intoxicated be treated primarily as someone who has a problem with substance abuse, and that it be viewed more as a health issue than a criminal issue. This legislation provides that people, particularly juveniles, may be taken into protective custody on the ground not only that they are intoxicated, but also that they may become intoxicated. If they are carrying a substance, whether it be a solvent or something which suggests they could become intoxicated, they can be detained. I appreciate the intent, but my concern is that there must be a guarantee that people who are detained under that provision, particularly juveniles, are not -

Hon Peter Foss: From where did you get that?

Hon GIZ WATSON: In the powers to seize substances or anything that might be construed as about to be used as an intoxicant.

Hon Peter Foss: It is just the substance, not the child.

Hon GIZ WATSON: That is reassuring. Perhaps I did not understand the detail, but my concern was that juveniles could be detained on the basis that they were about to become intoxicated. It is just the substance that will be taken.

Hon Peter Foss: Unless they are intoxicated.

Hon GIZ WATSON: I can see the intent in that. Again, I express some caution, in that it is important that such provisions not be used to the extent that they become a mechanism or a power to harass young people.

Hon Peter Foss: Are you aware of the changes that took place in Western Australia when we decriminalised public drunkenness?

Hon GIZ WATSON: Yes I am, but I am talking about the experience of the young people who tell me they feel they are consistently harassed and searched by police on suspicion rather than on the basis of concrete evidence. I do not know whether that is a result of the opportunity police now have to search if they think somebody is carrying graffiti implements or tools. This legislation has similar potential in that it will give police the power to approach and search young people for a substance or for evidence that they are about to become intoxicated.

Hon Peter Foss: I think that is already allowed under the graffiti laws.

Hon GIZ WATSON: Yes, and we oppose the graffiti laws for that reason. Those powers are open for abuse by police or, in this case, other authorised officers who might use the legislation as an excuse to search or question young people who happen to be in a certain place at a certain time. The reality is that many of those young people are on the street because they cannot be at home and do not have access to a safe place. They often suffer drug or substance abuse problems. However, it is a fine line between wanting to assist those people and removing them from a potential self-harm situation, and not infringing their rights to be wherever they choose.

Hon Peter Foss: The reality is that the legislation is intended to help police take a more conciliatory attitude to this situation. They have plenty of powers to harass people; this legislation is trying to encourage them to act in a more appealing manner.

Hon GIZ WATSON: Absolutely. As I said at the outset, we support the legislation as long as the proposed measures are not disproportionate and sufficient safeguards are in place to monitor the rights and responsibilities officers will have under the legislation.

Hon Peter Foss: We must be realistic. Aboriginal patrols deal with people who cannot read and write. I do not want them to have to deal with everything.

Hon GIZ WATSON: The Greens' position is that dealing with the symptoms rather than the causes is -

Hon Peter Foss: Other legislation deals with those issues. We have legislation to deal with people on the streets and other legislation to deal with treatment.

Hon GIZ WATSON: Yes, but not much legislation deals with the causes.

Hon Peter Foss: You cannot legislate for causes.

Hon GIZ WATSON: Some reforms in this State's drug legislation would do an enormous amount in preventing the necessity of this legislation.

The next issue relates to the role of authorised officers and the level of training that will be required. Will those authorised officers be members of the Police Force or of Aboriginal patrols? The work done by the largely volunteer members of Aboriginal patrols is excellent in reducing self-harm and minimising the negative consequences of Aboriginal people who are intoxicated on the street. However, it is important that sufficient attention is given to ensuring that authorised officers are well trained and prepared to deal with intoxicated people. People intoxicated by alcohol can be exceedingly aggressive. Members may not be aware that people affected by various drugs such as amphetamines can also be unpredictable and aggressive. It is important that the officers are adequately trained to deal with and detain people in a way that minimises danger to themselves and the apprehended person. The previous speaker already made the point, but we seek some assurance that, as the Attorney General indicated, this legislation is about minimising the harm suffered by intoxicated people and detaining them without bringing them into contact with criminal charges.

Hon Peter Foss: The member should read the second reading speech. We are trying to extend to intoxicants the measures we have already introduced for dealing with drunkenness.

Hon GIZ WATSON: Perhaps the second reading speech does not detail some of the matters on which I seek a response. For example, the Bill allows articles to be seized from a person who is detained and searched. We seek an assurance that a person would not, at a later stage, face charges under the Misuse of Drugs Act if such a search revealed cannabis or another drug.

Hon Peter Foss: We are not changing part VA of the Police Act. It is what we already have.

Hon GIZ WATSON: Perhaps this detail could be dealt with during the committee stage. I am sure it will be discussed. An assurance is needed that somebody detained under this legislation will not, at a later point, be charged under the Misuse of Drugs Act or the Police Act if they are found to be carrying something that could be construed to be a weapon or a graffiti implement or, likewise, that someone detained because they are intoxicated by alcohol is not later charged for street drinking under the Liquor Licensing Act.

The issue of the release of juveniles has also been raised. Into whose care will a juvenile be released? An adult has the right of objection about the person into whose care they are to be handed. We believe it is reasonable that a child should have similar rights of objection. The family member or other person who might appear to the authorised officer to be the most appropriate to receive the apprehended person upon release is often not the most appropriate, particularly when there is a history or existence of family violence.

Hon Mark Nevill: Is it not the case that young people are subject to more violence on the street than in the situation they are fleeing?

Hon GIZ WATSON: That is not what they tell me, but I guess each case is different. It is often the case that people feel they are safer on the streets. It is an indictment, but I do not think it is always the case that they would be better off back at home.

We accept that this legislation is a positive initiative. Anything that will deal with intoxicated people in a way that diverts them from criminal charges is to be welcomed, as long as we can be satisfied that the Bill is designed in such a way as to not infringe on the rights of the people who are detained.

I await the committee debate with interest. Amendments could be suitable in some areas, and I understand that a number of amendments were to be moved by the Attorney General. Does the Attorney still intend to move those amendments?

Hon Peter Foss: Yes; they are not of substance though.

Hon GIZ WATSON: The intended amendments were not on the Supplementary Notice Paper this morning.

Hon Peter Foss: I had not signed them. I have now signed them and they will be back.

Hon GIZ WATSON: Okay.

**HON MARK NEVILL** (Mining and Pastoral) [8.30 pm]: I support the Bill. It is disturbing to see young people sniffing solvents. I saw a group of 10 or 12 young people sniffing solvents near the railway station in Fremantle when sitting in my car near Coles, and I have seen examples of paint sniffing in Kalgoorlie and petrol sniffing in Aboriginal communities in the Central Desert. Unfortunately, jail was a deterrent for some of these kids, and an immediate increase in the problem arose when that deterrent was removed. These kids had been destroying their brains, but they seemed to quickly work out the changes in the law and how to get around them.

This protective custody measure is sensible. It is a euphemism for detention without charge, which the Attorney General found abhorrent in my proposal for street prostitution.

Hon Peter Foss: You wanted to keep them in for 48 hours.

Hon MARK NEVILL: It was for up to 12 hours. The Attorney did not read the Bill!

Hon Peter Foss: I did read it. I forgot.

Hon MARK NEVILL: The same process is in this measure. The idea is not to take people to a police lockup, which will be the place of last resort. One needs to develop a fairly sophisticated system of secure places for these people to be taken. Some of these petrol and other substance sniffers can be violent. Rocks have been thrown at cars and windows smashed by people with tins tied around their neck with a piece of string. I remember that happening at a funeral at Warburton.

I have reached the conclusion that, at least in my vast electorate, the best social workers are in the Police Service, which is more effective than all the other agencies. Maybe that is because it has greater numbers. Not all police are good. However, I have seen police officers playing basketball at 11 o'clock at night in the communities, which is far beyond the call of duty. I have seen them umpiring football matches and organising driving lessons for kids. Tom Price has 80 kids in the State Emergency Service cadets who scale the national park gorges and cliffs to conduct rescue work. The police are generally very good, but not all police are good and the sooner some people leave the Police Service, the better. The vast majority of police treat people with care and respect. Nevertheless, police are very nervous these days about becoming involved in a lot of issues or conflicts simply because of the rate of complaints made about whatever they do. We may need to encourage police to intervene in some cases in which people are abusing solvents.

The Government needs to be firm, particularly with Aboriginal people. I was listening to the debate in my room and the idea that these people should receive a warning was nonsensical. People are not always coherent when they sniff those substances. If those people could be taken away from those situations, and placed in safe custody, the Government would be doing them a favour. If as a result of this legislation there were any excesses by the police, that could be addressed by Parliament further down the track. This is a good first measure. It will allow the police and those deputised to do something about these situations, rather than to watch helplessly. It wrenches me to see that sort of thing happen. This legislation provides the police with some capacity to take the solvents off those people and to perhaps take those people to a place at which they can clear their minds, have a decent feed and do something constructive. There is a long way to go before those alternatives to custody can be developed. I am pleased to note that the Attorney General is a convert to detention without charge in selected cases. I support the Bill.

Debate adjourned, on motion by Hon Bob Thomas.