

CANNABIS CONTROL BILL 2003

Committee

Resumed from 15 August. The Deputy Chairman of Committees (Hon Jon Ford) in the Chair; Hon Sue Ellery (Parliamentary Secretary) in charge of the Bill.

Clause 5: CIN for offence under *Misuse of Drugs Act 1981* s. 5(1)(d)(i) -

Progress was reported after Hon Peter Foss had moved the following amendment -

Page 3, line 23 - To insert after “involves” the words “and involves only”.

Hon SIMON O'BRIEN: It has been some time since this Bill was last considered by the Committee of the Whole. I understand we are now considering clause 5. The supplementary notice paper dated 8 September carries an amendment in the name of Hon Peter Foss - serial number 3/5 - to insert certain words after the word “cannabis”. I am aware that there is another amendment. I wondered whether we had completed amendment 3/5.

The DEPUTY CHAIRMAN: Amendment 3/5 on the supplementary notice paper No 188 on Monday 8 September has been dealt with. We are now dealing with order of the day No 175. The amendment does not appear in the supplementary notice paper.

Hon SUE ELLERY: My recollection is that I indicated the Government's opposition to the amendment as proposed. However, it seemed to me that some Opposition members had other things to say.

Hon SIMON O'BRIEN: I thank the parliamentary secretary. As the amendment is not on the supplementary notice paper in front of me, will the Deputy Chairman please restate the nature of the amendment in its full context.

The DEPUTY CHAIRMAN: The amendment is to clause 5 and was moved by Hon Peter Foss. It states -

Page 3, line 23 - To insert instead after “involves” the words “and involves only”.

Hon SIMON O'BRIEN: That is now clear. We have spent quite a bit of time on subclause (2) and I do not intend to spend much more time on it. Hon Peter Foss explained to the Committee at some length why he felt that other words in the subclause, “if, and only if,” should be used in the way that they are. That question was decided in favour of the words, as printed, standing. The Committee moved to a further amendment offered by Hon Peter Foss. That is currently under consideration. Hon Peter Foss is absent today on urgent parliamentary business so members will not get the chance to hear further explanation of the amendment in the fullness it deserves. Before we move on from this clause, it is worth revisiting it for a few minutes so that the Committee understands the full intent of what is proposed. Frankly, it should not be controversial. The Opposition has made it quite clear that it opposes this clause and its intent. We are not debating that. Accepting that, as a major party in this House, we are trying to help knock this clause into better shape because we can see an unforeseen - by others - circumstance.

Clause 5 deals with the issuing of a cannabis infringement notice to people who, in general terms, are found in possession of an implement used to consume drugs. The Committee referred earlier to the smoking of drugs and the relevance of section 5(1)(d)(i) of the Misuse of Drugs Act, which relates to pipes and other utensils for use in connection with the smoking of a prohibited drug or plant. Clause 5 of the Bill deals with whether a CIN can be issued to someone a police officer reasonably believes has committed an offence under the Misuse of Drugs Act; that is, he has in his possession pipes or utensils for use in smoking a prohibited drug or plant. Clause 5(2) states -

A CIN may be issued under subsection (1) if, and only if, the alleged offence involves cannabis.

The intention of the Government is clear to the extent that we know what it is trying to achieve. It is removing from the existing drug law regime the provision that relates to the smoking of cannabis only and seeks to have the new CIN regime applied to that. In so doing is it not the Government's intention, from all we have heard, that it apply to anything else? For example, a pipe used to smoke opium would also be caught under the CIN regime. The Government is saying that is what the clause states. The point Hon Peter Foss was making is that it does not state that at all. Anyone who has had anything to do with people involved in breaking the law or dealing with the laws that are meant to cover such things knows that we will find people who are smart alec enough to take the law and twist it in a way that was not intended. In this case the subclause states that a CIN may be issued if, and only if, the alleged offence involves cannabis. If the alleged offence involves opium, for example, and traces are found in a pipe or a pipe is found to have traces of crack cocaine, would the clause apply? Could a CIN be issued? Clearly not because the subclause states “if, and only if, the alleged offence involves cannabis.” What if the pipe or other utensil has traces of cannabis and of some other prohibited drug? We were told some weeks ago that that does not happen. I can tell the Committee that it does happen. There are

two arguments here in support of what Hon Peter Foss has proposed. Firstly, it does happen that cannabis is smoked having been laced with other prohibited drugs. It happens very frequently and unless the parliamentary secretary can tell me otherwise, it is not the intention that in such a circumstance a CIN will be issued. The second argument is that knowing that, it would be possible for someone smoking a prohibited drug other than cannabis to try to take advantage of the clause by lacing whatever he is smoking with a small amount of herbal cannabis. It might not be enough to make any impact, but it is the sort of smart alec thing that could be done and, in turn, be picked up by a smart defence lawyer in subsequent court proceedings. He could say that, according to the law, if the alleged offence involves cannabis, his client is entitled to have the matter dealt with by a CIN and not through an appearance in court or anything else. With that in mind, I offer those comments to the parliamentary secretary in the context that if there is to be an intent, that intent must be a reality reflected in the legislation that passes through this place. I do not think the Government should persist in resisting amendments to this Bill as it now proposes amendments of its own. It is not as if the Government now has to avoid that situation of sending the Bill back to the Assembly amended. If we can knock it back into some sort of shape by this simple amendment, that should achieve the outcome that is, without any doubt, required. I commend the motion that the words that are proposed to be inserted be inserted.

Hon DERRICK TOMLINSON: The debate on this amendment has really gone on long enough. The Government has indicated its intention to stick with common usage and not accept what it would say is a point of pedantry. It has also indicated that the instructions to police officers will be quite clear; that this is intended to apply only to cannabis, even though that is not what the letter of the law says. Let us be quite clear that we are talking about an offence under section 5(1)(d)(i) of the Misuse of Drugs Act, which states -

- (1) A person who -
 - ...
 - (d) has in his possession -
 - (i) any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant;

The intention, which the parliamentary secretary reaffirmed emphatically and clearly - I commended her on the clarity of her explanation - is that it involves only cannabis. What we have heard from Hon Simon O'Brien, and what I observed was affirmation from the parliamentary secretary's advisers, is that a smoking implement can be used for several prohibited substances such as cannabis, heroin and crack. What is crack? I do not know.

Hon Simon O'Brien: Refer to my contribution to the Address-in-Reply in 1998.

Hon DERRICK TOMLINSON: I see. The honourable member said that those prohibited substances can sometimes be taken together. In spite of the stated intention - that is, if and only if the alleged offence involves cannabis - it will not be the police officer who lays the charge who will exercise discretion about the law. He or she will exercise discretion, which is appropriate to the course of his or her duties, but police officers are not charged with interpreting the law; they are charged with applying the law. We have been given the explanation that police officers will be told that this means that, and that if this means that they will act according to how they have been instructed to act, within the quite permissible realms of a constable's discretion. However, when such a matter gets to court, common usage will not be used. The court will interpret what the words of the law say, not according to common usage, but the language according to authoritative dictionaries - there is only one; the *Oxford English Dictionary* - and according to the rules of grammar. The common usage has the qualifier "only" and sprinkles it round in the wrong place. It is so often used and I so often get angry, because the wrong use of the qualifier "only" changes the meaning or makes the meaning obscure or allows for alternative interpretations. The court will interpret the words of the Act. Therefore, it involves cannabis. An exchange between a judge and constable would be as follows: "Constable Plod, did this implement show traces of cannabis?" "Your honour, yes." "Constable Plod, did this implement show traces of other substances?" "Your honour, yes." "Constable Plod, what were those other substances?" "Your honour, heroin and crack." "So there were three substances?" "Yes." "But one of them was cannabis?" "Yes." "Then a CIN applies." There is the interpretation. It does not matter, because it involves cannabis. That is what the Bill says. What Hon Peter Foss has tried to impress upon the Government is that the intent is not met with the language of the Bill. The language of the Bill is that it involves cannabis. The intention is that it involves only cannabis. The Opposition does not accept the Government's position but acknowledges it. The Government is quite happy to accept an imprecise meaning in the Bill. What it wants is clear in its own mind. Despite the fact that what it wants is not what it says, it is not prepared to move on. So be it. We will see what will happen the first time that this is tested.

Hon SUE ELLERY: I indicated the Government's position the last time we were in committee on this matter. To reiterate, if the police have any reason to suspect that any other substance is involved, they can proceed to test

Hon Simon O'Brien; Deputy Chairman; Hon Sue Ellery; Hon Derrick Tomlinson; Hon Dr Chrissy Sharp

an implement and exercise discretion not to issue a CIN at all but to proceed to lay charges. Police advice to government is that the proposition put by the honourable member about mixing drugs in the same implement is rare. On the basis of that advice, the Government is not prepared, on balance, to proceed to a situation in which police resources would be required to be tied up to ensure that everything was tested on every occasion that this situation was met. For those reasons and the reasons I articulated before, the Government opposes the amendment.

Hon CHRISTINE SHARP: The Greens (WA) informed the House during previous debate on this proposed amendment that we oppose the smoking implement charge per se. Therefore, we clearly do not support the amendment either.

Amendment put and negated.

Hon SIMON O'BRIEN: The Opposition does not support clause 5. This Bill is arranged in a curious way. I am surprised that the Bill did not start off with a clause that created cannabis infringement notices before it went on to refer to the situations in which a cannabis infringement notice might apply. In that way, we are doing it a bit back-to-front. If that is the way the Government wants to do it, so be it. The first clause that we come to that establishes a CIN offence is clause 5. In other stages of the debate the Opposition has quite clearly stated its opposition to the principle of this Bill, for all the reasons that were given at those times. This particular clause simply embellishes, though in a fairly minor way in the view of some others and me, a fundamental flaw in the policy of the Bill. For that reason the Opposition will oppose this clause. It is also regrettable that we were not able to fix the clause in the way that I have just outlined and as was explained so well by Hon Derrick Tomlinson.

Even if we had been able to fix it, we still would not support this clause if it had been amended. However, I can certainly advise the House that we will not support this clause when the question is put shortly.

Clause put and a division taken with the following result -

Ayes (13)

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

Noes (12)

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

Pairs

Hon Adele Farina	Hon John Fischer
Hon Louise Pratt	Hon Peter Foss
Hon Ljiljanna Ravlich	Hon George Cash
Hon Tom Stephens	Hon Bruce Donaldson

Clause thus passed.

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

Hon SIMON O'BRIEN: I move the amendment standing in the name of Hon Peter Foss -

Page 4, line 3 - To insert before "involves" -

if the alleged offence takes place at the person's place of residence, and

Clause 6 prescribes that a cannabis infringement notice may be issued for offences under section 6(2) of the Misuse of Drugs Act, which, for the purposes of the exercise, we can describe as being in possession of or using drugs. Subclause (2), which is sought to be amended, sets some parameters. It states -

A CIN may be issued under subsection (1) if, and only if, the alleged offence -

(a) involves an amount of cannabis that is not more than -

- (i) 30 grams; or
 - (ii) if an amount less than 30 grams is prescribed by the regulations - that amount;
- and
- (b) does not involve -
 - (i) cannabis resin or any other cannabis derivative; or
 - (ii) a cannabis plant under cultivation.

The amendment that I have just moved proposes to change subclause (2) so that the affected part would read -

A CIN may be issued under subsection (1) if, and only if, the alleged offence -

- (a) if the alleged offence takes place at the person's place of residence, and involves an amount of cannabis that is not more than -
 - (i) 30 grams;

We will have to deal with the substance of clause 6 after the questions relating to amendments have been dealt with. Therefore, we will come back to that in due course. However, the purpose of this amendment in isolation is to set a further parameter that an offence of possession or use of cannabis - particularly possession - that may be dealt with by a CIN can take place only if it is at the person's place of residence. During the second reading debate, concerns were expressed by a number of members about situations that had arisen in other jurisdictions regarding the problems of people possessing and using cannabis in a public place - for example, in the street at a public event - and thereby causing other people, be they parents with young children or whomever, to feel intimidated or uncomfortable in the presence of such activity. I know that the Government says that it is not legalising that, and that is acknowledged. However, the fact is that when the law is seen to be relaxed to such an extent - in this case it seems that it is not treated as a very serious matter at all in terms of priority or penalty - that may become commonplace.

Concern was also expressed about people possessing and using the stuff in other public areas, including motor vehicles and the workplace, and the effect that that would have on a safety basis and so on. A lot of the pro-decriminalisation rhetoric, of course, does not refer to that; rather, it refers to people having a right to do what they want in the privacy of their own homes. That is the spirit in which Hon Peter Foss, as I understand it, has proposed this amendment, and I think further explanation is unnecessary.

Hon SUE ELLERY: The Government opposes the amendment. This and the following amendment relate in part - I will address my comments to the group of amendments, if I may - to the notion of whether we are talking about a dealable quantity. Hon Simon O'Brien's initial remarks related to whether the cannabis use was in somebody's home. The Government has made its position quite clear throughout the debate. The use of cannabis remains illegal wherever it is used. In respect of the 30-gram limit, it is important to note that it is already an upper limit. Police evidence suggests that most cannabis seizures have involved significantly less than that amount. In the jurisdictions in which infringement notices apply, lower amounts are set out in the infringement regimes. It is also the intent of the Bill for the police to retain the discretion to charge people with simple possession if they have reason to believe that they are in any way flouting the intention of the infringement scheme. For those reasons, the Government opposes the amendment.

Hon CHRISTINE SHARP: I also oppose this amendment for various reasons. First, the section of the Misuse of Drugs Act that the Bill seeks to amend refers to an offence for possession. The Bill seeks to replace the offence with an infringement notice. The Misuse of Drugs Act does not discriminate as to where one might possess something, but simply refers to the fact of possession. As well as altering the infringement system, the amendment will alter the original offence.

I also point out that the argument Hon Simon O'Brien made about doing things in private will not be the effect of the amendment. The amendment seeks to restrict a person to using cannabis in his or her own residence, not to doing it in private. That is a very different matter, particularly because smoking cannabis is consistent with drinking alcohol. Smoking cannabis is frequently a social practice; that is, it is done in the company of other people. The idea that we encourage cannabis smoking in a way that is non-social and can be done only in a person's own home is detrimental in the same way that it would be detrimental if we were to encourage people to drink alcohol on their own, which is the practice of a person who is in a chronic state of addiction. It is not the way cannabis is usually smoked. Therefore, the Greens (WA) do not support the amendment. Of course, if it were to pass, the amendment would be very draconian and much more restrictive than the current statewide cautioning system that was introduced by the Opposition when in government. The Opposition is now trying to persuade the House to support an amendment that is more conservative than its own system. It is hard to accept

that the Opposition's motive in this matter is good. For those reasons, the Greens (WA) will not support the amendment.

Hon SIMON O'BRIEN: When it comes to questioning motives, that is a game that two can play. There is nothing wrong with the Opposition's motives and what it is trying to achieve - nothing at all. I question the motives of Hon Christine Sharp. What is her motive in this? Does she have a conflict of interest in the law we are considering? Hon Christine Sharp should be up front about it. She wants a law - she has been quite clear about this - that enables people to take up to 30 grams of herbal cannabis around to other people's homes. Why? Is it so that she can share it with them, or so that they can bring it around to her place? Hon Christine Sharp should not talk about the place of residence. What she is really concerned about is infringing on what she and others in her circle want to do. As I have said before, I believe that this law is very much about changing community standards to suit the convenience of certain people - it is not for the good of the vulnerable in our community. Before she starts reflecting on the motives of the Opposition, I am very interested to know what personal interest Hon Christine Sharp has in this matter.

The parliamentary secretary pointed out that a subsequent amendment standing in the name of Hon Peter Foss could be twinned with this amendment and, therefore, she also canvassed that amendment. I agree with Hon Sue Ellery that it is convenient to do that and that the next amendment depends on the disposal of this amendment. Mr Deputy Chairman (Hon Jon Ford), the next amendment - if you will allow me to refer to it because of its relationship to this amendment - reads -

Page 4, line 6 - To insert after "amount;" -

- (b) involves an amount of cannabis that is not more than -
 - (i) 2 grams; or
 - (ii) if an amount less than 2 grams is prescribed by the regulations - that amount;

That is a fairly radical change, and I have a sneaking suspicion that the Government will not go along with it because it attempts to remove the 30-gram limit, which we have argued long and hard - we have produced evidence in support of our argument - is far too much and is for the convenience of some in our community who are in regular contact with not only the police, but also our young people, who should not be encouraged by the passage of this type of law. In short, what Hon Peter Foss is getting at is that if the Government wants a cannabis infringement notice regime for minor offences, it should be made for minor offences. Even if the Government accepts the amendment, the Opposition still opposes a CIN regime for other reasons, which I will go into later in the committee stage. The Opposition will throw out a challenge to the Government. Members have seen me with my 30-gram bag of imitation herbal material. We have debated at length that that is far more than is required for anybody's immediate or even short to medium-term needs, unless he is dividing it up and selling it.

Hon Sue Ellery: That is what you said.

Hon SIMON O'BRIEN: That is what I said, and I was able to demonstrate how it happens. If the parliamentary secretary talks to the police, she will find that that is precisely what happens on the street. If she thinks that is wrong, then the advice she is getting is wrong. I can offer some other qualified advice that is not what she wants to hear. It does not matter, however; the Government is deaf to what is happening with local-level cannabis distribution. I do not know how the parliamentary secretary thinks people acquire the stuff. Perhaps it just materialises out of nowhere. Perhaps Hon Christine Sharp's mates just drop around with the stuff, or it just appears out of the blue. It does not happen that way. A 30-gram limit - that is the upper limit, as the parliamentary secretary has said - is more than enough to allow the sort of small-scale dealing that is the very backbone of the cannabis problem in our State and everywhere else to continue to grow and flourish.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order, members! It is 4.30 pm, and I am required to interrupt the debate to take questions without notice. Before I do, I draw the attention of the Committee to Standing Order No 97, which states, in part -

... all imputations of improper motives and personal reflections on Members shall be considered highly disorderly ...

Debate interrupted, pursuant to sessional orders.

[Continued on page 10752.]