

CANNABIS CONTROL BILL 2003

Statement by Minister for Health

MR R.C. KUCERA (Yokine - Minister for Health) [12.15 pm]: During the debate on the Cannabis Control Bill 2003, I undertook to obtain advice from the Crown Solicitor's Office concerning the interpretation of clause 7 of the Bill. Under the provisions of clause 7 a police officer who has reason to believe that a person over the age of 18 years has committed an offence involving cannabis plants under section 7(2) of the Misuse of Drugs Act 1981 has the option to issue a cannabis infringement notice, or CIN, to the alleged offender, unless the offence involves possession or cultivation of more than two plants. The intention is that the option of issuing a CIN will not be available when more than two cannabis plants are found on the same premises, irrespective of the number of people who ordinarily reside at those premises. In other words, the limit is intended to be a limit per premises, not a limit per person per premises.

In the debate, several members canvassed an alternative interpretation of clause 7; namely, when police officers enter a property inhabited by, say, four adults and discover eight cannabis plants, each of those adults may claim possession of two plants and may each receive a CIN and not be charged under section 7(2) of the Misuse of Drugs Act 1981.

I have received advice on the interpretation of clause 7 from crown counsel, Mr George Tannin, SC. The advice is that the number of cannabis plants found on the premises will be a determining factor in whether the option of issuing a CIN may be exercised in any given situation. In crown counsel's opinion, it is not open to police officers to artificially allocate plants among the inhabitants of premises for the purpose of deciding whether a CIN may be issued under clause 7 of the Bill or charges brought under section 7(2) of the Misuse of Drugs Act 1981. If up to two cannabis plants are found on the same premises, a CIN may be issued to all persons who appear to police to have possession of the plants. I note that crown counsel concludes his opinion on this matter by stating that clause 7 does not require amendment to give effect to the intent behind it. On the basis of that advice, the Government does not consider an amendment to clause 7 is necessary.

Concern was also expressed during the debate about the proposed offence inserted as new section 7A of the Misuse of Drugs Act 1981 by clause 28 of the Bill. In particular, members were concerned about the effect of including the words "or reasonably ought to know" in the proposed offence. In his advice, crown counsel notes that in the context of a criminal prosecution, the term would be likely to be interpreted narrowly by the courts to refer to the facts in a person's possession at the time an alleged offence is committed. The second reading speech on the Bill in the other place has been amended to further clarify the Government's intention and to reflect crown counsel's advice on this matter. I table a copy of the advice for the benefit of members.

[See paper No 1083.]

Point of Order

Mr P.G. PENDAL: On a point of advice, is it competent for a member to move that the contents of the ministerial statement be made an order of the day for the next sitting of the House?

The SPEAKER: It is my understanding that for that to occur, a member must give notice in the normal manner and not after a ministerial statement has been made.