PROTECTIVE CUSTODY BILL 2000

Second Reading

Resumed from 18 October.

HON N.D. GRIFFITHS (East Metropolitan) [9.33 pm]: I am pleased to speak on this Bill, because once again this evening it is an opportunity for the people of Western Australia to note the Australian Labor Party's commitment to community safety. The people of Western Australia should note that we have expedited this evening the passage through this House of the Criminal Code Amendment (Home Invasion) Bill 2000, the Offenders (Legal Action) Bill 2000, and the Acts Amendment (Fines Enforcement and Licence Suspension) Bill 2000; and I propose to do what I can to facilitate the passage of the Protective Custody Bill 2000. I do so because the Bill provides a number of worthwhile policy measures. However, there is a concern about the potential for the administration of this Bill to undermine the substantive recommendations of the Royal Commission into Aboriginal Deaths in Custody. The provisions in the Bill are proper and worthwhile; however, the outcomes of the Bill will depend on its administration. Therefore, it is incumbent on whoever is in government in Western Australia to ensure that the Bill is properly administered.

Police currently have the ability to apprehend and detain people who are intoxicated by alcohol. These powers are intended to ensure that people affected by alcohol are not a danger to themselves or others. These powers do not extend to people affected by other intoxicants. The Bill makes reference to intoxicants, including alcohol and drugs, and volatile or other substances such as petrol, paint and glue; as well as illicit substances such as heroin, amphetamines and the like, which are capable of intoxicating people. The police currently have no power to ensure that immediate care is provided to intoxicated people found in public places. The Bill essentially seeks to extend the existing provisions on alcohol to allow police to take direct action to ensure the care and protection of intoxicated persons, irrespective of the cause of intoxication.

The Bill contains specific provisions and a number of worthwhile measures for cases in which a child is apprehended. It allows an officer to seize and destroy an intoxicant that is being used, or that the officer suspects will be used, by a child. It allows officers to apprehend persons intoxicated by other substances in the same way as they can apprehend persons intoxicated by alcohol. It allows officers to seize items found during a search of an apprehended person, and to destroy substances that contain alcohol or other intoxicants. It requires that apprehended children be released into the custody of a parent, guardian or other responsible adult. The policy is that the safety and welfare of the child is paramount. It makes provision to deal promptly with apprehended adults, by releasing them into the care of another person where practicable. It maintains and establishes alternative release procedures and significantly, in part 6, provides a regime for judicial review.

Subject to the proper administrative arrangements, the Bill has the capacity to improve the wellbeing of Western Australians and to enhance public safety. The Bill is consistent with the Australian Labor Party’s stance on public safety and as such it supports the Bill.

HON B.K. DONALDSON (Agricultural) [9.38 pm]: I am happy to support this Bill. I am delighted that the Labor Party has recognised the good legislation on law and order that the Government has introduced.

Hon N.D. Griffiths: We regret your delay in bringing it before us.

Hon B.K. DONALDSON: I smiled at the opening statement by Hon Nick Griffiths. The Government welcomes the support of the Labor Party. That is what good law and order is all about - bipartisanship. However, the legislation was framed by the Government. It was introduced in this House by the Government. While the Government and the Attorney General welcome the support of the Labor Party, let us not kid ourselves about where this legislation arose. It has been very gratifying for me sitting on the back bench to know that the Government is on the right track because of the unilateral support for this legislation on law and order. I guess the unfortunate part about it -

Hon Tom Stephens: It took five years and now you are on the right track.

Hon B.K. DONALDSON: If the Leader of the Opposition wants to stand up in this House and oppose some of the law and order legislation, he can do so at his peril. He would not have the fortitude to do it, anyway. He knows Caucus has made a decision, and it shall be done. I know it is a bit early to start talking about the Supplementary Notice Paper, and I will comment on some of the proposed amendments at the committee stage.

HON PETER FOSS (East Metropolitan - Attorney General) [9.43 pm]: I thank Hon Nick Griffiths for his comments tonight. I shall deal with some of the suggestions made by Hon Helen Hodgson, which I suggest are not appropriate. As Hon Nick Griffiths pointed out, this Bill will extend part VA of the Police Act, which deals only with alcohol, to other forms of intoxicants. Part VA is a very important section of the Act, because the area

of public drunkenness and offences arising out of drunkenness definitely involves Aboriginal people. One of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was to try to prevent the incarceration of Aboriginal people on alcohol-related charges. Part VA of the Police Act has been a very effective and worthwhile measure.

It is probably fair to say that a major part of the work in picking up Aboriginal people who are drunk has been carried out by Aboriginal groups. A number of patrols move around at night to pick up Aboriginal people and either take them back to their homes or, if they believe that will lead to some form of physical abuse, take them to a sobering-up centre. The decriminalisation of public drunkenness has been a very positive and salutary area of operation.

The problem is that other forms of intoxication, some of which were around when part VA was introduced and some of which have now become a bit more obvious - inhaling paint, petrol and glue in particular - have become a very serious problem, principally among young Aboriginal people. It is very sad to see young people in a state of intoxication in a public place when little can be done. At the moment the police are left with two alternatives: Ignore them and leave them in that public place, or wait until they commit an offence - as they inevitably will - at which stage they can be arrested. They then go through a criminal process which will result in their incarceration, at least until they cease to be intoxicated. These intoxicants are worse than alcohol, in that they usually lead to some form of permanent brain damage. Alcohol is bad enough, but these intoxicants are worse, because even if those intoxicated do not commit an offence but merely lie around in public in a stupor, they are doing permanent damage to themselves.

The Government sought to extend the regime to other forms of intoxicants. We envisage major usage of this legislation among Aboriginal communities. At times Aboriginal communities are quite perplexed as to what they will do with young people who intoxicate themselves on petrol and other volatile substances.

It is very sad; it is a matter about which the elders wring their hands. They look to the Government to provide them with the power to deal with it. I believe that the appropriate way to deal with it is through Aboriginal people themselves. Through the changes that were made in part 5A, there has been a massive drop in the number of people who have died in custody. The majority of people who died in custody did so in lock-ups. The Government does not want people to be placed in lock-ups. Police standing orders make it almost impossible to keep people in lock-ups. Police are instructed to keep people out of lock-ups if it can possibly be avoided. As far as this Bill is concerned, it is the last thing that anybody wants. The police do not want it to happen. We would prefer to people to be sent to sobering-up shelters or taken home; especially young people. The Government has been trying to get Family and Children's Services to put arrangements in place. The department cannot guarantee that every remote community will have someone to whom intoxicated people can be referred.

I urge that nothing be put into the procedure that will make it impossible to be used in Aboriginal communities. The concept of warnings and notices is not practical in such communities. I know that the theory of the matter is correct. The reality is that including such provisions means that people picked up by police in the metropolitan area will be treated correctly according to standing orders. Every Aboriginal person who is picked up in a remote community or regional area will not comply. The reality is that we cannot expect them to comply. Things will be done illegally. There is no need to extend the illegal ways in which these things are dealt with. I understand the purity of the suggestions being made and while I would normally agree with them, people must understand that in Western Australia there are a lot of laws that work well in the metropolitan area and in places like Bunbury and Geraldton but will not work in the rest of the State. There has to be a realisation that there must either be two sets of laws - ones that recognise the difficulties in remote and regional areas - or the laws must be pitched at the people who are going to use them. The unfortunate reality of the matter is if one wants to find a single cause for Aboriginal people being incarcerated, it is substance abuse, mainly alcohol. The four main reasons that Aboriginal people are in jail can be traced back to substance abuse. It does not mean that we just accept it.

I commend the fact that part 5A was introduced under a Labor Administration. It has been extremely successful. It is not the end of the matter; many things still need to be done about substance abuse, particularly by Aboriginal people. I urge members not to try to put into this Bill extra matters that are not currently in part 5A, because a regime will be created that will be capable of compliance only by police in the metropolitan area. It will not work elsewhere. I urge members to do something for Aboriginal people and to give them something that will work. The Aboriginal communities are particular concerned about their young people using this form of intoxicant. Older people tend to use alcohol. The communities need powers to try to save the next generation who are destroying their minds through the use of solvents.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Intoxicated people may be apprehended -

Hon HELEN HODGSON: I move -

Page 5, line 16 - To insert after "apprehended" -

> and, before or at the time the detention commences under section 7, the authorised officer must inform the person apprehended of the rights conferred on that person under Part 6, section 10 and section 24

I addressed this issue a couple of weeks ago during my speech at the second reading stage. This legislation is good inasmuch as it provides certain rights to people who have been apprehended; specifically, the right to request a review by a justice of the peace, to be taken for a medical examination, and, under clause 24, not to be charged with an offence while in custody. My concern is that people who have been apprehended should be informed of these rights, so they know these rights exist. Otherwise, in the event of a problem arising and those rights being breached, there is no recourse, since the apprehended person did not know the rights were there in the first place. I recognise that there is some concern about whether a person who was apprehended due to being intoxicated would comprehend those rights. I have been informed by people who have been apprehended in an intoxicated state - I must say that I have never been apprehended in that condition -

Hon N.D. Griffiths: Is that a matter of luck?

Hon HELEN HODGSON: Quite likely. I am not saying that I have never been in an intoxicated state, just that I have never been apprehended!

Often a person who is intoxicated may either deliberately appear to be less comprehending than he actually is, or he may be able to understand some issues to a greater extent than the person dealing with him believes. As a precaution he should be informed of his rights. I have a further amendment on the Notice Paper dealing with the release of the apprehended person, the purpose of which is once again to provide that certain rights that continue past the time of detention should be advised either to that person or to the person into whose custody he is released. Although in many circumstances a person may not be fit to recognise or exercise those rights, it is important that he be informed of those rights so he can exercise them if need be.

Hon PETER FOSS: I regard this amendment as taking our current regime backwards. Currently, sobering-up centres are located in Broome, Derby, Fitzroy Crossing, Halls Creek, Kununurra, South Hedland, Roebourne, Wiluna and Perth, which has two. Three are under development in Geraldton, Wyndham and Midland. This amendment would have a negative impact on the current regime with regard to alcohol. This is a totally impractical provision, which Hon Helen Hodgson is wanting to impose on Aboriginal communities. She will find it just will not work.

I have to oppose this amendment. It is just not on having to read intoxicated people their rights before the patrol can pick them up. The amendment to part VA of the Police Act would never have worked if we had this sort of provision.

Hon E.R.J. Dermer: How long would it take to read someone their rights?

Hon PETER FOSS: The patrols are usually operated by volunteers. It is just not practical.

Hon GIZ WATSON: I do not understand why the Attorney General is reacting so strongly to this. It is my understanding that when people are arrested certain information is provided to them.

Hon Greg Smith: They are not being arrested.

Hon GIZ WATSON: I understand that. The provision of information is hardly extraordinary in the process of taking somebody in. I do not accept that this is a huge imposition, and I do not see what is wrong with having it included.

Hon GREG SMITH: Some people who bring forward amendments to this Bill have absolutely no understanding of the situations people face when they try to implement the law. Most of the arrests or apprehensions that occur, and the charges that follow, involve assaults on police officers who are trying to help these people. I

attended a meeting of 150 people in Kalgoorlie who asked us to get intoxicated people off the streets. The police who try to apprehend these people end up being accused of police brutality if the people do not want to be taken away and fights ensue. The police only want to take them to a sobering-up shelter. It is totally impractical to suggest that when all that is happening the police should read them their rights. That is the reality of the situation, and what the Attorney General was trying to tell members opposite in the nicest possible way. If we include this in the Bill we will provide someone with the opportunity - let us say the Aboriginal Legal Service - to go to the person who has been apprehended and ask whether they were read their rights. That would open another can of worms over whether procedure was followed. The patrols were started to help intoxicated people and get them off the streets and into the sobering-up shelter or lockup, so that they do not harm themselves or anyone else. I appeal to members to consider the practicalities. They should not support this amendment.

Hon MARK NEVILL: I do not think this is a practical amendment. In the condition that many of these people are in, if someone read them their rights, such as a medical examination, they will insist they be taken for a medical examination. I do not think that adds anything to the situation. Often the people who do this work are volunteers and we must rely on them to do the right thing by these people. If they need medical attention they will take them to the outpatient clinic or a doctor. We must show a bit more trust in these people. I do not know that reading people their so-called rights under the different statutes will add anything; in fact, it may cause more problems than it solves. I do not see any great need for the amendment.

Hon HELEN HODGSON: It was interesting to hear that the minister has a list of the locations of sobering up shelters because I do not believe I was provided with it earlier in the discussion. In a sense, it strengthens what I am saying because I understand that under the legislation the minister can publish a list of approved places, and sobering-up shelters would be approved places. However, in circumstances where there is no sobering-up shelter, it is likely to be a lockup. In that circumstance it is appropriate for people to be told of their right to request a medical examination and to request a review by a justice of the peace. With those comments, I commend the amendment.

Hon MARK NEVILL: While we are discussing sobering-up shelters, I remind members that any new legislation is reviewed every five years. As part of that process we should be reviewing the use of sobering-up shelters to see who are using them and what real benefit they provide. I am not saying we do not need them. However, there should be an evaluation of them in the review process, as I suspect that in some cases they are used by the same people day in and day out. That may not be the case, but we need to explore the area a little further than this Bill does.

Amendment put and negatived.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Apprehended person may be searched -

Hon PETER FOSS: I move -

Page 7, lines 6 to 10 - To delete the lines and substitute -

(2) The search of an apprehended person must be done by a person of the same sex as the apprehended person.

(3) An authorized officer may use reasonable force to do the search.

This amendment is a rewording of the current lines 6 to 10, which read -

(2) The search of an apprehended person must be made by an authorized officer of the same sex as the person unless that is impracticable.

(3) An authorized officer may use reasonable force to make the search.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 7, after line 10 - To insert the following new subclauses -

(4) If it is reasonably necessary in order to do the search, an authorized officer may authorize another person to do the search or to assist in doing the search.

(5) A person so authorized -

(a) may do the search or assist in doing the search, as authorized; and

(b) must obey any lawful and reasonable direction of the authorized officer.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 9 put and passed.

Clause 10: Apprehended person may be taken for medical examination -

Hon HELEN HODGSON: I move -

Page 8, line 2 - To delete "needs" and substitute "appears to need or requests".

My first amendment to this clause is in respect of a person who may request a medical examination. It is in order for a person to request a medical examination if that person believes there is a reason for that to occur. I commend the amendment.

Hon PETER FOSS: I should explain the origin of this clause. It came from parliamentary counsel because of the two systems by which a person who behaves in an unusual manner in public may end up in some form of security - one under the Mental Health Act and the other under the Protective Custody Act proposed by the Bill. Parliamentary counsel raised the question that it may not be possible for a police officer to tell whether a person is behaving in such a way because of mental instability or intoxication. That may be true; I do not know. However, parliamentary counsel wished to provide for that alternative so that such people could be shifted from one Act to the other under the one piece of legislation.

The person could be taken into protective custody because he or she was obviously wandering around looking peculiar. If one was of the opinion that it was not due to intoxication but might be due to some form of mental illness, one could use this clause to take the person to a doctor, who could then examine that person and decide whether the person should be dealt with under section 29 of the Mental Health Act or left in the doctor's charge. This was a suggestion by parliamentary counsel to try to tailor the two logical possibilities. I would hate to see it turn into the right of a person to be examined. It is a benefit to the person who has taken someone into protective custody just in case that person is mistaken in thinking that the other person should be in protective custody because he or she is intoxicated. It may be that instead of being intoxicated, the person has a mental problem that causes the behaviour. That is why this is here. We should not write into the legislation that a person has a right to a medical examination. This is merely a logical tailoring of two possibilities.

Amendment put and negatived.

Hon HELEN HODGSON: I move -

Page 8, line 13 - To insert after "fact" -

, the name and qualifications of the person conducting the examination,

This is an unrelated amendment to the fact that the officer must record that a person was examined and the date and time that person was examined. It is appropriate also to include who did the examination and that person's qualifications. It is particularly relevant if, as the minister said, it is to determine whether there is intoxication or a mental illness. It could make a difference; the qualifications of the person may have an impact at a later stage. I do not see that as any additional administrative burden.

Hon PETER FOSS: I do not mind the name of the person being recorded, but if the qualifications of the person must be recorded, does that mean that he or she must put down MB, BS, FRACP, FRACS and anything else? It says that the examination must be conducted by a suitably qualified person. The name would be all right, but if we require the person's qualifications, it might make it a bit broad. To record every qualification of a person might be a little beyond normal. I do not have a problem with including the name.

Hon HELEN HODGSON: I do not see any problem with including the qualifications. However, if including the name and deleting the words "and qualifications" would make the amendment acceptable to the Government, I would prefer to have the name included than nothing at all.

The CHAIRMAN: Does the member seek leave to remove the words "and qualifications"?

Hon HELEN HODGSON: Yes. I seek leave to alter the amendment by removing the words "and qualifications".

Leave granted.

Amendment, as altered, put and passed.

Clause, as amended, put and passed.

Clause 11: Releasing apprehended children -

Hon PETER FOSS: I move -

Page 9, line 26 to page 10, line 2 - To delete the lines and substitute -

(5) Any detention under section 7(1) of a child by a police officer must not be in a police station or lock-up unless —

(a) in the time needed to comply with subsection (1) exceptional circumstances arise that justify detaining the child in a police station or lock-up; or

(b) exceptional circumstances make it impracticable to comply with subsection (1).

I assure members that the police certainly do not wish to detain a child in the lockup, but this makes the matter quite clear. The police have no desire to keep children in the lockup. They complain when they occasionally have to keep children there on remand, because of the inability to maintain sufficient remand facilities. The police will be happy to have this included in the legislation. There may be many occasions on which circumstances arise which do not allow them to do so.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 12: Releasing apprehended adults -

Hon PETER FOSS: I move -

Page 10, lines 20 to 22 - To delete the lines and insert instead -

(4) Any detention under section 7(1) of an adult by a police officer must not be in a police station or lock-up unless —

(a) in the time needed to comply with subsection (1) exceptional circumstances arise that justify detaining the adult in a police station or lock-up; or

(b) it is impracticable to comply with subsection (1) by taking reasonable measures.

This amendment is in similar terms to the previous one.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 13 and 14 put and passed.

Clause 15: Release procedure -

Hon HELEN HODGSON: I move -

Page 13, after line 7 - To insert the following new subclauses -

(4) Upon release of an apprehended person, the authorised officer must inform the person, or the person into whose care the apprehended person is released, of the rights conferred on the person by section 20 and section 24(2).

(5) Upon release of an apprehended person, the authorised officer must provide to the person, or the person into whose care the apprehended person is released, written information in respect to the health effects of intoxicants and including details of available counselling services.

Although these two new subclauses are together because they would appear together in the legislation, they relate to two issues. I will explain both issues, and if the Committee of the Whole feels it is appropriate to take them separately, we can deal with that. The first issue concerns the question of informing a person of his rights. These two rights under proposed sections 20 and 24(2) confer a lasting effect, which extends beyond the time of detention while intoxicated. For example, under clause 20, a person may apply to a Local Court for a declaration that he or she was not intoxicated. Obviously, that will occur after the time of detention, and that is

foreshadowed by the fact that the application must be made within 30 days after the date when the person was released. Clause 24(1) refers to an apprehended person who has not been released, and it states that certain things must not happen. For example, that person must not be questioned about offences. Under clause 24(2), if subclause (1)(a) is contravened, any answer is not admissible in evidence against the person in any proceedings for the offence. Again, that will clearly extend beyond the time of detention, and it is important that people who have been detained are aware that if either of these two situations arise, they have the right to respond in a certain way. The amendment that I am proposing relates not only to the apprehended person, but also, if he is released into the care or custody of somebody else, to the person into whose care he is released, and that person should also be informed of those rights.

Proposed subclause (5) highlights that the Australian Democrats see this as a health issue rather than an issue of crime and offending. We believe that it is appropriate to have written information available on the premises and given to a person. I am well aware that people must be willing to undergo counselling before it can be effective, and that simply providing information does not necessarily mean that any counselling will take place or be effective. However, it is appropriate that the information be made available, and it should be given to the person so that he can follow it up, if he is in a position and willing to do so. I commend the amendment to the Chamber.

Hon PETER FOSS: I again indicate that although I believe the sentiment is highly worthy, it is not very practical. I refer to the community patrol in Warburton. Do members really think that there will be written information there? There is a high possibility that the person to whom it is given does not read and certainly does not speak English. This is a cosy metropolitan attitude, but it will not work in the places where the problem really exists. It will make all those people break the law. There should not be one more law that Aboriginal people cannot obey.

Hon GREG SMITH: I would like Hon Helen Hodgson to spend three or four days at Fitzroy Crossing so that she can see the reality. The nurses at the Fitzroy Crossing District Hospital are tearing their hair out because they see on the footpath the discarded bottles of antibiotics they have administered. It is ineffective and impractical to give people literature that tells them the consequences of alcohol and asks them to seek counselling. One of the reasons police do not take these people off the streets is the amount of paperwork involved with processing them. The Government is trying to make it as easy as possible for drug-affected people to receive help. I oppose the member's amendment as the amount of paperwork and administrative requirements of the Bill must be minimised to make it as easy as possible for the police to take people into protective custody.

Amendment put and negatived.

Clause put and passed.

Clauses 16 to 30 put and passed.

Schedule 1 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Peter Foss (Attorney General), and returned to the Assembly with amendments.