

**MISUSE OF DRUGS AMENDMENT (PSYCHOACTIVE SUBSTANCES) BILL 2015**

*Second Reading*

Resumed from 20 May.

**MRS M.H. ROBERTS (Midland)** [4.16 pm]: The Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015 was read into the house back in May, and has not been much of a priority for the government. These psychoactive substances, commonly known as synthetic cannabis or synthetic cannabinoids, have been on sale in the suburbs and throughout the state of Western Australia for some years. Media reports on the subject from 2010 and 2011 show that people were raising this as quite a concern then. The government has claimed to have solved this issue many times over. In fact, in 2011 it claimed that it had solved the problem of Kronic in the community. For those who are unaware, Kronic is one of a number of names for synthetic cannabis products. There is an assortment of other names for products on sale throughout the state. At long last, some four years later, this bill now attempts to prohibit the sale, supply, manufacture or promotion of any psychoactive substance. At long last, it will cover a range of products, rather than defining the specific products within the bill. Unfortunately, some of the earlier attempts to solve this problem actually created more problems as the various manufacturers just found different substances to include in these products.

These products are a very serious issue, although I say that the government has dragged the chain on this for way too long and should have acted much sooner. It should not have taken previous efforts by the Leader of the Opposition to show how readily these products were available in his electorate of Rockingham, nor should it have taken the numerous efforts by a Liberal member of the upper house to highlight again and again to the government how readily these products are available. I know that these products have been for sale in my own electorate at various locations and businesses in Midland. I am not about to promote those businesses in any shape or form, but I have spoken to police in the past about some of the locations at which my constituents have informed me these products were for sale. Recently, people talking about drugs have been saying that one of the most insidious things about drug use is that it does not affect just one demographic group, geographic area or social class. It does not affect only people who are poor or people who are rich, people who live by the coast or people who live inland, or people who live in the city or in the country.

I also learnt that although there might be a greater prevalence of drug use amongst younger people, particularly with this kind of drug use, it is not exclusively for younger people. In my capacity as a local member of Parliament, I learnt to my surprise that many older people use these substances—crazy as it is. One of my constituents, a mature woman, came into my office and complained that her husband was using these substances—from my recollection, her husband was well into his 40s—and that they were on display at a particular location and available over the counter within my electorate. He had multiple issues, as many people who use drugs do. Sometimes it is a matter of using multiple drugs, both legal and illegal drugs, and sometimes that is in combination with alcohol. Some people claim that psychoactive substances are potentially worse for people to smoke than marijuana because of the additives that go into them. Some additives can have very detrimental health effects, obviously in terms of hallucinogenic effects and effects on people's brains, but also I am advised that some of the substances or toxins within these products can affect internal organs and have permanent health effects for people who choose to use them.

I highlight that the opposition will certainly not be hypocritical by criticising the government for this delay and causing further delay by speaking at length on this bill. Although I will make some more detailed remarks, having discussed this with many of my colleagues, we are very keen to see this legislation go through. This afternoon is the first time that the government has brought the bill on for debate. I hope that the legislation could pass through this house this afternoon. The opposition will do what it can to support the government, despite the government's long delay in getting the legislation through the Assembly, so that it can go immediately upstairs and the Legislative Council, according to its time frame, hopefully can deal with this legislation expeditiously so that, at long last, we can give police the power they need to confiscate these psychoactive substances and to deal with people who in any way advertise or promote these substances, let alone sell, supply or manufacture them.

Not allowing the sale of psychoactive substances is one part of the equation, but I believe it is a very important part. It concerns me that many of these products are also available over the internet. That is one place where people acquire them. Hopefully, this legislation will mean that whether it is high school students, older teenagers, or young people, they cannot just walk into a shop and see these products on display—nor will they be able to ask for them over the counter because, as many of us have been advised, there are shops and locations where these products are not on display but people know to go and ask for a particular product there when they approach the salesperson or at the counter. They can ask for a kind of incense or they ask for Kronic or for these products by a variety of other names, which other people have listed and have been reported in the media. After an earlier attempt in 2011, the government continued to list more and more substances on its banned substance list. This proved to be an ineffective way of dealing with things. At long last, we have this legislation. We asked for about a year why this

legislation was not brought forward. Hon Phil Edman, who has just joined us sitting at the back of our house, certainly raised it with government ministers in the other house, too, during that time. I think he was very frustrated and made that frustration known over the last year. Now we finally have the bill, we can see that it is a very brief piece of legislation. In fact, whilst it is numbered pages 1 to 10, there are effectively about eight pages of print, many of which are slabs of words and definitions. It is not complex legislation.

I am hopeful that the government has it right and we are supporting the legislation on that basis. However, I want to comment that the government was very slow to act on a whole range of drug problems in our state. It was slow to act in dealing with psychoactive substances. Police and members of the community were very frustrated that products that, in my view, are worse than marijuana are readily on sale throughout the length and breadth of this state. Likewise, we remain concerned about how tardy the government has been on dealing with the meth issue. A couple of announcements were made of late and I would like to see their substance. To say that the government has police officers targeting drugs or a particular drug is not new. This state has had a drug squad for decades. Drug squad officers are dedicated to dealing with drugs and looking at the roots of importation and a range of other things. The minister has now announced that she is particularly dealing with meth. I think it was only the previous month that Michael Keenan and the minister announced that they were dealing particularly with the issue of ice. Crystal meth or ice is pretty much one and the same but these are continued new initiatives. The earlier announcement was about at long last having state and federal cooperation between police officers. Again, that is nothing new. I will judge the government on its results, and will certainly be interested to know whether, in effect, there are extra resources or whether it is just a rebadging of existing resources with new labels for squads and teams and so forth. Badges and labels alone will not do the job. Significantly more officers must be involved, as well as having the ability to properly support them with the technology and other equipment that they need to do this job. We will see how that goes.

More specifically with this legislation, we will go briefly into the committee stage to ask a few questions about those provisions. I am reassured that under this legislation police will have the power to destroy the substances once seized and to dispose of those substances as is appropriate. I think that is an important power for police to have. There are other provisions in the legislation that relate to police. I think this will end some of the frustration that is being caused for the police. I and numerous other members of Parliament have directly raised with police the concerns in our own electorates, but the police themselves have been very frustrated. There are clear examples of packets of synthetic cannabinoids, with an assortment of names, being confiscated by the police, but because the substance does not meet the criteria and is not on the current list of 33 substances, or whatever, that are banned, the police have had to give those synthetic drugs back. That is very frustrating for the police and a significant waste of their time.

These stronger laws and this all-encompassing legislation will cover the whole gamut of psychoactive substances. This will give the police more latitude to seize these products and prosecute the people who are involved in the sale and supply of these products. It will also enable the police to deal appropriately with these substances by way of destruction and disposal, and that is a very good thing.

In conclusion, we offer this legislation our strong support, and we will assist its passage through this house. We intend to go briefly into consideration in detail and ask a few questions. However, we are very much taking the government on trust on this bill. We sincerely hope that the government has got it right on behalf of the whole community of Western Australia—not just parents but also spouses, brothers and sisters and other family members who are concerned about what these kinds of substances are doing to their family members. Many people are concerned that 12, 13, 14 and 15-year-old kids are currently able to acquire these substances all too readily. We certainly do not want that situation to continue. Hopefully this bill will give the community some level of reassurance that we can finally stamp out these synthetic cannabinoids.

**MR P. PAPALIA (Warnbro)** [4.32 pm]: I rise to support the comments of the shadow Minister for Police on the Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015, and also to take the opportunity to correct the record with respect to the history of this matter as explained in the second reading speech. I note that it is claimed in the second reading speech that —

On 8 July 2011, the Australian government listed eight synthetic cannabinoids ...

That is preceded by the comment —

In order to rapidly respond to the harms that were occurring, Western Australia acted unilaterally ahead of national scheduling.

In the second reading speech, the suggestion is made a number of times—this is the sentence that piques my interest—that —

Western Australia has been at the forefront nationally in dealing with the issue of new and emerging psychoactive substances under our existing legislation, and in 2011 was the first state to ban synthetic cannabinoids sold using brand names, such as Kronic, using schedule 9 of the Poisons Act 1964.

I have to say that is one interpretation of what happened. The real interpretation—the real history of the matter—is that the state opposition brought to the attention of the people of Western Australia, and the government of Western Australia, the fact that synthetic cannabinoids were being sold over the counter from a shop that is across the road from a school in my electorate. Children in my electorate had somehow gotten hold of these synthetic cannabinoids and had attended school under the influence of these substances. The impact that was having on those children was brought to the attention of the government, the Parliament and the people of Western Australia in 2011 by the state opposition. However, the response by the government was not to pursue the people who were selling that product. The response of the government was not to try to make the sale and supply of that product in Western Australia illegal. The response of the government of the day, through the Minister for Mental Health, Hon Helen Morton, was to attack the opposition for buying an illegal substance. The government went to the extent of sending the police to the office of the Leader of the Opposition, and the police demanded to be given the product and to be told who had bought it. That was a disgraceful response. It took the focus off the people who were selling these synthetic cannabinoids to children in Rockingham and put the focus onto the people who were raising the matter in the public domain. The result was that nothing happened.

I know it is difficult. I know that no-one had a solution at that stage and no-one had identified a response that might work beyond having these products named in the Poisons Act. However, Hon Phil Edman then did exactly the same thing. Sadly, it was years later. Fortunately, he is a member of the government, so the police did not go after him quite so badly. They did not try to throw him in the lockup. They went after the shop that was selling the stuff. I am trying to recall what year it was. It was 2014, I think. Hon Phil Edman did exactly what I and the Leader of the Opposition had done two years previously. He raised this issue in the public domain. He held up the substance that someone in his office had purchased from that shop—exactly the same procedure that had been followed in my case—and fortunately on this occasion it shamed the government into action. However, the shop from which that product was purchased is still operating in Rockingham. Unlike the member for Midland, I am not inclined to not name that shop. Most of the people in Rockingham know what I am talking about. Therefore, it is not a bad thing to put on the record the two shops that I want WA Police to pursue immediately upon this legislation passing. These two shops are within about 50 metres of each other in the member for Rockingham's electorate, so it will not take much in the way of resources. One is Cloud 9 Smoke Shop, and its address is 5 Leach Crescent, Rockingham, and the other is Pipe Dreams, which is just around the corner at unit 6, 6 Acute Court, Rockingham. Go there, police of Western Australia, once this law is passed, and shut them down.

I know that these shops are still selling synthetic cannabinoids. As the minister knows, because I raised it in this place earlier this year, a mother who was distraught and at her wits' end came to see me because her adult son was buying this stuff. She had gone into these shops and given them photos of her son and his name, and her contact details, and had begged them not to sell these products to him, but they continued to do that. It has destroyed his life and her life, and it continues to do damage. I had another constituent come into my office, a middle-aged man—he is actually a young man compared to me; he is in his 30s—who was a productive and contributing member of society up until the time he became addicted to synthetic cannabinoids. He did it because he was working in the mines and he was told this stuff would get out of his system faster than marijuana and therefore he would be able to get through the urinalysis testing on the mines. He became addicted to this substance and it destroyed his life. His marriage broke up, he lost his job, and he is now completely incapable of making a productive contribution to society. He came to my office after we had been in the media about this—I think probably after Hon Phil Edman had been in the media recently—to explain to me the extent of the damage that synthetic cannabinoids had done to him and to beg us to do something about it.

Therefore, I am glad to see this legislation come into this place. The only point I would make at the outset is that I am disappointed it took so long. As the member for Midland has indicated, this is not exactly the biggest piece of legislation in the world. I do not think it was the drafting of the bill that took up time. Once we take out the front page and the title page, we are talking about six and a bit pages of well-spaced legislation with not much in the way of content. I hope that the approach taken to the legislation assumes that the government can make it work to reduce the supply of any of these types of generic cannabinoids, hallucinogens and opiates—all the substances listed. I hope that approach works. It looks to be a good approach. I will be watching with great enthusiasm for any action taken by the police, particularly in Rockingham in those two shops I named. People right now are waiting for action on them. They have been waiting literally for years—since 2011 when I first heard of Kronic. I know that the name was changed subsequently and minor alterations were made to the chemical components employed in the substance, but people have been waiting a long, long time for some action.

We have seen some tragedies. Apart from the fact that people are living with an addiction to the substance, there have been deaths, which is terrible. It is high time that we acted and I am really glad that the legislation is in this

place now. I will be expecting the police to respond immediately the legislation comes into force. I think that the police already know that this is a franchise that we are talking about here—Pipe Dreams at least. I do not know whether the owners can be sourced back to the same people, but certainly Pipe Dreams is opening other shops around the city. In recent times the member for Armadale indicated to me that there is now one in his electorate and I know that they are in the city. It is a tragedy that has been allowed to go on for too long.

I know that the Minister for Police copped a bit of criticism over the almost myopic focus on the supply side, but I think it is one area where we can have an impact on reducing the opportunities for supply. It will not be easy. I do not begin to pretend that it will stop the supply of this drug, but I think making it less accessible has to have an impact. There will still be illegal operations and people will still supply it, but they will be subject to the risks associated with knowing it is illegal and, hopefully, we will be able to pursue them and make it not as openly available in a shop as to suggest it is a fair thing. We know that the labelling, which invariably states that it is not for human consumption and is a herbal incense or something of that nature, gives a false suggestion to people purchasing it that it may not be too bad. The suggestion that it is also a version of cannabis masks the threat it represents. Who knows where and by whom the chemical in the drug is made? It is made by people with whichever ingredient they choose to include in it and it represents an incredible threat to people who consume it. Invariably people consume it at the outset assuming that it is not too bad because it is a form of cannabis, which is just not true. Even if cannabis were not a threat—I do not believe that; I believe it is a substance we should avoid—it is a good thing that it will not be as readily available. I thank the minister for taking action on it. I look forward to the police implementing and utilising this law to the full extent of their capabilities.

**MRS L.M. HARVEY (Scarborough — Minister for Police)** [4.43 pm] — in reply: I thank members for their contribution to the debate on the Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015. I am pleased to be closing out the second reading debate on it.

The member for Warnbro is right to say that these drugs are sinister. The substances have been cleverly marketed. They have been specifically marketed and targeted at vulnerable groups in our community. That is why I am really pleased that we have the support of the opposition in bringing this legislation through Parliament and, hopefully, it will have a swift passage through both houses of Parliament.

Members have heard me speak often in this place about the demand drivers for drug use and the activities on trying to block the supply of drugs in our community. We cannot do one without the other. We have to spread our effort to ensure we address the drivers of demand in the population, and also do our utmost to interrupt supply. The member for Warnbro is quite right to say that these psychoactive substances are marketed and downplayed in the community as less of a curse than they really are. Those substances have deleterious effects on health and, importantly, the mental health of many users.

I am really pleased to hear the member for Warnbro acknowledge that cannabis is a dangerous drug. We believe—I certainly believe—that cannabis is a very dangerous drug, particularly in the way it has been genetically modified to increase the tetrahydrocannabinol content. We are now seeing cannabis having significant and permanent effects on many users of that drug.

We all remember the history of the matter differently. In the incident the member for Warnbro raised about the member for Rockingham and the police effort in trying to access the substance that he allegedly purchased from that place, I want to put on the record that no member of government directed the police to do anything in that circumstance. Indeed, it is improper for me as the minister or for any other minister in government to be directing police to go to any place. My conversations about anything to do with policing are properly held with the Commissioner of Police, and the commissioner is the only person who can direct police officers to interrogate or investigate anyone or to go anywhere.

**Mr P. Papalia:** I was referring to the comments by the health minister.

**Mrs L.M. HARVEY:** I just want to clear that up. I want to make it abundantly clear on *Hansard* that the government did not direct any police action and the government will not direct police to take any specific action.

**Mrs M.H. Roberts:** Helen Morton called for it.

**Mrs L.M. HARVEY:** We can call for it but we cannot direct it. I think we need to make a careful distinction. The Commissioner of Police is responsible for directing any action of his officers.

The issue of psychoactive substances is not a new problem. It has been a problem in international jurisdictions for a number of years. Indeed, around the world many governments have been struggling with and attempting to deal with the issue of psychoactive substances. We think that this legislation will work. With emerging drugs, the changes in drug culture and the monetary gain for drug traffickers by dealing in this space, it is obvious that they are very innovative and very inventive and find ways to circumvent legislation whenever and wherever

possible. However, we think that we have got the tension with this legislation right, but we will obviously interrogate that further at the consideration in detail stage.

Where similar legislation has been introduced, the new psychoactive substances have largely disappeared from retail outlets, which is a really good, positive sign. Some of the new psychoactive substances are not only synthetic cannabinoids and synthetic amphetamines, but also stimulants, depressants and other hallucinogenic drugs, so it is an emerging trade. The only way that we will address that really is by looking at the demand drivers of people leading to that substance abuse. We therefore have a big job on our hands, but we are prepared to take it on and indeed we have been doing so for quite some time.

The member for Midland is quite right in her comments that the existing system has been incredibly frustrating for police. They are waiting eagerly for this legislation to get through Parliament and to be gazetted to allow them to start using it. In particular they want to be out there confiscating and destroying these drugs, and taking them out of the community permanently. When it comes to the response of police to emerging substances such as psychoactive substances or methamphetamine, or whatever scourge it happens to be that is being pushed by these drug dealers, I rely very much on the commissioner to advise me on the kind of approach that needs to be taken. Using this evidence-based policing methodology, due regard is being given to the most effective way to try to tackle these substances. With respect to the meth task force and the strategy for methamphetamine in the community, the Commissioner of Police, Dr Karl O’Callaghan, says that this targeted approach to one drug is unprecedented in his over 40 years of policing in Western Australia. He said that because of the risk and danger, and the rapid emergence of methamphetamine in the community, this approach is what the evidence-based policing model says is the best approach to take. Obviously that will morph into something else as the drug dealers start to get used to this approach by police, but it is an unprecedented response. Hopefully, that unprecedented response will get an unprecedented reaction in the community and we can start to drive down the prevalence of methamphetamine in our community. With respect to psychoactive substances, that is exactly what we are attempting to do with the Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015. I commend the bill to the house. I thank members for their contribution to the debate and look forward to questions about the legislation during consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clause 1: Short title —**

**Mrs M.H. ROBERTS:** At the short title of the Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015, I note that this bill deals with a range of offences, one of which is to promote a psychoactive drug. One of the most common ways to promote a drug now is on the internet—not only via the internet, but also via social media. Clearly, Facebook, Twitter, Instagram and a range of other kinds of social media programs and devices, however they might be referred to, are now available on people’s phones and tablets. That is how a lot of people learn about a range of things. I was listening recently to a commentator in the area of advertising. Traditional advertising comprises a smaller and smaller component of overall advertising. The majority of people—not only young people—are now taking a greater share of the advertising fee via social media. In many respects that kind of promotion was seen as more effective with people. It was seen as more credible than advertisements. To elaborate a little further, if someone is watching a television program and designated advertisements come on, they know that companies promoting those products have paid to advertise them. There is a little bit of suspicion there. If products are pushed at them or promoted by their friends or people that they know via assorted social media platforms, that product is much more likely to be regarded positively. In a strict advertising sense, people are more likely to purchase the product. When we look at the promotion of things a decade or more ago, we were generally looking at standard advertising—pamphlets, leaflets, that kind of thing, or perhaps signage at a store that promoted something. In this day and age, that is a dwindling part of the market, and a growing part of the market is social media. I wonder whether straight-up, under clause 1, I can be informed how those methods of promotion will be curtailed by this legislation?

**Mrs L.M. HARVEY:** The member raises a valid point. We will certainly need to have an education campaign informing the community that this new legislation will create an offence for any promotion or marketing of psychoactive substances or substances purporting to have a psychoactive effect. That is regardless of whether the person involved in that promotion is actually selling it or deriving an income from it. Under this bill, it is an offence to promote the psychoactive substance or even a substance that is purporting to be psychoactive. The bill also provides for a contemporary understanding of the marketing techniques used. We have tried to broadly encompass

some new and emerging techniques that might occur as a result of the changing behaviour of sellers and promoters of these sorts of substances. Complementary legislation has passed the commonwealth Parliament that specifically targets the importation of psychoactive substances, including online sales. We are starting to get cooperation federally with respect to the importation and the online sales, which is where a lot of these sales occur.

**Mrs M.H. ROBERTS:** Can I have some clarification about how this works? What are the boundaries of the legislation? If somebody based in South Australia, New South Wales or Victoria is promoting these products in Western Australia via social media, will this legislation have any jurisdiction over those persons? Would they be able to be prosecuted for the promotion of these products in WA?

**Mrs L.M. HARVEY:** The short answer is that if the person or the entity promoting the psychoactive substance was based in another state but the promotion of the substance was occurring in Western Australia, that would be an offence and WA would be reliant on its cooperation with its partners in other states in trying to prosecute. Similar sorts of cooperation exist in other areas, for example in cybercrime. My expectation is that police would be relying on the coordinated effort that occurs at present. For example, if child exploitation material is being promoted in one state jurisdiction by somebody who resides in another, there is a cooperative effort on behalf of police to bring those people to justice. Also, a regulation-making power in the legislation will allow us to ensure that we can respond quickly to any changes in promotional activity and forms of promotion of the drug.

**Mrs M.H. ROBERTS:** I have another question on the same topic. I ask this because the methods of promotion of things now are really via various social media platforms. Therefore, I query this. There could, for example, be a Facebook site, a Twitter page or whatever. First up, let us say it is a Facebook site that someone might have set up elsewhere in the country, or potentially even here in Perth. A person might then like that substance on Facebook. In liking it, would that person effectively be promoting it, or does it require a retweet if the person is on Twitter or the equivalent in Facebook?

**Mrs L.M. HARVEY:** As with most legislation in criminal law, there would have to be an intention behind the action to prove the offence. Therefore, the person would have to be actively promoting, or be the promoter of, the page or the marketer of the substance in order to be prosecuted. It still relies on an intention to promote.

**Mrs M.H. ROBERTS:** If we use the Twitter example, let us say someone tweets something promoting a psychoactive substance that would fit within the definition in this bill. I then retweet that to make people aware of it. That would not be deemed to be promoting it. The person promoting it might have five followers and I might have 5 000 followers. I could retweet it to 5 000 people and be more effective than the original person was. If my intent in that could not be proved, would I not be guilty, or how does that work?

**Mrs L.M. HARVEY:** I am advised that that intention would need to be formed or established, and we would need to interrogate that on a case-by-case basis. That would often come down to the relationship between, for instance, the original promoter and the subsequent promoters of the substances. It would be dealt with on a case-by-case basis, and we would be reliant on the police to put in their best efforts to ensure that the correct people are brought to account in response to promoting substances.

**Mr D.A. TEMPLEMAN:** We are debating clause 1, the short title.

**The ACTING SPEAKER (Mr P. Abetz):** Yes, clause 1, which is the short title of the bill. It may perhaps be appropriate to remind people that we should restrict ourselves somewhat in the discussion at this point.

**Mr D.A. TEMPLEMAN:** In further clauses of the bill, I am aware of the definitions that relate to substances that are not referred to as creating a psychoactive effect. I know that they are listed later in the bill under the definitions. In the minister's second reading speech, she referred to closing the loophole with regard to the misuse of these drugs. This does go to the short title. I am interested in how often these sorts of drugs change. One thing that has been mentioned in previous debates on this issue is that a drug such as Kronik comes out, and then a chemically changed substance comes out. In the case of these drugs and how they are taken, my understanding is that some of them are smoked and some are inhaled. In her second reading speech, the minister mentioned that there were seven original substances, and there were a further 14 by August 2011. There are changes constantly. In the short title definition, will we capture any future changes that we know will happen? I am interested, for example, in whether a powder that is mixed with a liquid—water or whatever—could be determined to be an alcoholic beverage under the Liquor Control Act, which I know is referred to as one of those substances that this bill does not apply to. All I am interested in finding out is whether this name will pass the test of time, knowing that we are dealing with constantly changing substances that are concocted and presented to the public. If it does not pass the test of time, we will end up having to come back to amend this legislation because it did not quite capture the original intention. Does the minister have a comment on that concern?

**Mrs L.M. HARVEY:** Yes, I do, member for Mandurah, and I thank you for raising it. In Ireland, where this legislation has been tested, we are starting to see that the amount of psychoactive substances in that community

is being driven down significantly, so the legislation appears to be working. In 2013 the United Nations identified over 350 psychoactive substances, and the number continues to expand. Indeed, that is where the previous approach just was not working, because a slight change in chemical composition resulted in a requirement to have a new chemical gazetted under the Poisons Act in order for people to be prosecuted under the previous regime. This legislation covers substances that induce a psychoactive effect or are marketed as though they are going to produce a psychoactive effect, or substances sold that induce a psychoactive effect, regardless of whether or not they have been marketed that way. We think we have covered everything, but, clearly, if we look at history, we will find that at some time we have not covered everything. The culture may well change, and these drug dealers will come up with a different way to try to circumvent the system. However, if we look at the experience in Ireland, where very similar legislation has been in place, it has been effective. It is driving down the prevalence of psychoactive substances in the community. Indeed, as I understand it, most of the shopfronts there have been shut down, which is our intention here in WA.

**Mr D.A. TEMPLEMAN:** The minister highlights the Irish experience as one of the focuses for how this legislation has been formed. She has obviously looked at the experience in Ireland. I am not sure how long the Irish legislation and practice of enforcement have been in place. I would be interested in that. The minister may be able to respond when I sit down again shortly. The minister said that the United Nations had identified several hundred substances —

**Mrs L.M. Harvey:** Three hundred and fifty.

**Mr D.A. TEMPLEMAN:** — and they will change. I want to make sure that in the future there is no way, through definition, that a peddler of such things could legally try to claim that the actual substance that they are peddling is in fact a medicine or a type of liquor—that is, they use a legal loophole that might be in this legislation that allows them to squeeze out of it. As the minister knows, our current practices have been about playing catch-up all the time. Kronic comes out and when we try to close that loophole, another substance is added or a chemical compound changed to the substance and we then have a new problem that the current policing legislation does not allow us to prosecute, so we have to come up with another bill. It probably comes under the definition of “psychoactive effect”, to be honest. The definition of psychoactive effect easily refers to alcohol, but it does not include alcohol. I know we are debating the short title, but I want to know whether this legislation genuinely will close any loophole for a future substance that might be peddled simply as one of the other substances that are identified as not being covered by or not applicable to this legislation.

**Mrs L.M. HARVEY:** The legislation is constructed so that if a substance is psychoactive or purports to be a psychoactive substance, for the purposes of the legislation it is a psychoactive substance. There are other regulatory mechanisms. The Therapeutic Goods Act relates to therapeutic drugs. For example, some of the therapeutic drugs legally available by prescription will have a psychoactive effect on consumers in certain circumstances, but they are regulated under a different mechanism—the Therapeutic Goods Administration system. Alcohol is regulated under the Liquor Control Act and the Liquor Licensing Act, and comes under a different regulatory mechanism. In addition, Food Standards Australia New Zealand regulates food substances. Basically, anything that has not been cleared for human consumption under the regulatory mechanisms for food and anything that does not fit inside the TGA and alcohol will be potentially covered by this legislation. If, for example, at some future point in time, someone mixes a psychoactive substance with alcohol and it is purported to have a psychoactive effect, it would fall under this legislation, not the Liquor Licensing Act.

**Ms S.F. McGURK:** I want to raise a question about another substance sold at some of the shops that this legislation targets while we are debating the short title of the bill—that is, fake urine, which is available for people who want to get around drug testing, particularly at their workplaces. This issue was raised in my electorate about a shop near Kings Square. Some of the staff working in retailers alongside the shop raised concerns about the sort of activity going on in that shop in Fremantle. That is partly because of the substances available there that are targeted by this bill, which is a good thing.

**The ACTING SPEAKER:** Member, can you just clarify for me as Acting Speaker how that relates to the short title of the bill, because I am not sure that urine is a psychoactive substance?

**Ms S.F. McGURK:** I am asking whether any attention has been given to those other substances that are being sold in these shops, including fake urine, which is available for people who want to try to get around drug testing at their workplaces.

**Mrs L.M. HARVEY:** The short answer is no, this legislation is not designed to target fake urine, but it does target the shops that also sell fake urine. If we take away the bulk of the goods that those shops are trying to sell, which is predominantly psychoactive substances and paraphernalia linked into the ingestion or otherwise of psychoactive substances, and they are selling only fake urine, I put it to the member that they might not have a very good commercial basis on which to continue their business. It is certainly our intent to make them unviable and put them out of business, but this legislation does not specifically target fake urine.

**Clause put and passed.**

**Clause 2: Commencement —**

**Mrs M.H. ROBERTS:** Some of us have been waiting a very long time to see this kind of legislation come into effect. As I have already noted, I am very hopeful that this legislation can pass through the Assembly today and go promptly to the upper house. I am hopeful that the Liberal Party and the Leader of the House in the upper house will give this legislation appropriate priority in the upper house, so that it can expeditiously pass through that house as well. That being the case, my first question is: when does the minister anticipate, given that the Legislative Council deals with the legislation expeditiously, that this legislation will be ready to come into effect? Is there anything the minister's department needs to do before the legislation can receive royal assent, and why are clauses 1 and 2—the short title and commencement—coming into effect straightaway? How long does the minister think the delay will be between clause 2(a) and (b) coming into effect? Subclause (a) covers when the short title and commencement date come into effect at royal assent and subclause (b), of course, covers the rest of the act. We have seen other government legislation that has stated the proclamation of the bill and then a year or two later we find out that the only parts of the legislation that have been proclaimed or acted upon are the clauses equivalent to those here—that is, the short title and commencement date.

Clause 2 states —

- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

I am asking a number of questions. When can we expect to see clauses 1 and 2 get royal assent? What delay does the minister expect there will be between clauses 1 and 2 receiving assent and the rest of the legislation, and why is that separate? I am also asking what the minister's department needs to do before this legislation can be proclaimed and, finally, why different days need to be fixed for different provisions of the bill.

**Mrs L.M. HARVEY:** Obviously the government is very keen to see this progressed as quickly as possible, so it will get royal assent as soon as the bill passes through both houses of Parliament. I understand that enactment of the legislation has been separated into clauses 1 and 2 and the rest of the bill to allow a period when we can draft regulations and gazette the required regulations that may need to sit behind this legislation, and there will be some minor IT amendments to the police system to ensure that we can manage this effectively. However, I do not anticipate a lengthy delay to the final commencement of the legislation once it has passed both houses of Parliament.

**Mrs M.H. ROBERTS:** I take it from the minister's remarks that she has not actually got the draft regulations ready, and I question why she has not. Given that she introduced this legislation in May and there has been public endorsement from the opposition for the bill, why are those regulations not yet ready?

**Mrs L.M. HARVEY:** I understand that those draft regulations are in train, but obviously they cannot be finalised until the legislation has passed through Parliament. I do not anticipate a big delay for the regulations, but the information technology amendments may take a small amount of time. We are very keen to get this legislation gazetted and the police are very keen to be out there using it, so we will be working very expeditiously as soon as this legislation has passed through Parliament.

**Mrs M.H. ROBERTS:** It is very easy for the minister to stand up and suggest that the regulations are in train, but in train actually means nothing. There might have been five minutes, five hours or 50 hours work done on it. In train is just like asking how long a piece of string is. That is a fob-off, as I see it, rather than any kind of an answer. Either the regulations have been drafted or they have not. I would be very surprised if the agency has been so slack as not to have at least come up with some draft regulations. The minister said that the regulations cannot be finalised until such time as the bill has been passed. Many ministers over many years in dealing with many pieces of legislation have actually tabled draft regulations in this house saying, "Here are the regulations we are looking to put in place if this bill is successful." This is especially so with legislation that has the support of the opposition. There is no danger that this legislation will not pass both houses. I suggest that if the regulations have not been drafted, they need to be drafted post-haste. If the police, as an agency, think for any reason that that cannot be done until the legislation has gone through, that is just nonsense, and they need to be properly advised. It can be done; it has been done many times with many pieces of legislation. Many ministers get their agencies to draft the regulations along with the bill, and they have the regulations sitting there. That is the most informative way of progressing legislation. I do not accept the minister's answer that it is in train, that it is none of my business, and asking how long is a piece of string. That is not an acceptable answer. I want to know whether the regulations have been drafted; and, if not, why not? When is the minister going to get on with it, if it has not been done already?

**Mrs L.M. HARVEY:** The government does take this legislation very seriously. As the member is no doubt well aware, parliamentary counsel will not accept the final drafting of regulations until the legislation has been passed by both —

**Mrs M.H. Roberts:** The final drafting—so you're using cute words here, aren't you?

**Mrs L.M. HARVEY:** Allow me to finish.

With respect, the position of the opposition was known by government only today, so to make the assumption that we will have the full support for the entire legislation through both houses of Parliament and therefore to pre-emptively presume the outcome of parliamentary debate would be rather impertinent on the part of government. We have not presumed that this legislation will go through unamended. Of course we have started with the drafting of regulations, but they cannot and will not be finalised until the legislation has passed through Parliament. I warmly welcome the support of the opposition for this legislation. We would like to see it passed through Parliament expeditiously, so that it can become operational for the benefit of the community. I thank the opposition for its support of the legislation.

**Mrs M.H. ROBERTS:** When I first spoke to this clause, I listed a number of questions as I was making some comments. I then summarised those questions at the end. I am still waiting for the answers to some of those questions, so perhaps now I will stand up and ask them one by one and see whether I can now get answers. I asked straight off what things the minister's agency had to do in order for this legislation to be ready for proclamation. We now know that drafting the regulations is one of those things. Does the agency need to do other things, or will the agency need to make any expenditure?

**Mrs L.M. HARVEY:** As I said previously, finalising the regulations needs to occur before the legislation can be gazetted, and information technology amendments will need to be progressed. We will obviously need to put together a public education campaign, but some consultation work has already been done on that.

**Mrs M.H. ROBERTS:** What consultation has occurred on the public education campaign?

**Mrs L.M. HARVEY:** That is an interaction between my office and that of the Minister for Health. Obviously, we have had some discussions during the crafting of the legislation about what we need to inform the community of. Clearly, we cannot progress with any of that until the legislation has passed through Parliament

**Mrs M.H. ROBERTS:** In addition to public education, will police officers need to be trained and educated in this process; and, if so, will that occur before the legislation is proclaimed, and what is required?

**Mrs L.M. HARVEY:** The education of police officers will occur through the normal processes. Some information will be passed through to recruits as they go through training in the Police Academy, and there is the police portal, which is the normal way for serving police officers to access information about changes in legislation, procedures and so on. That will occur through the normal police portal education process.

**Mrs M.H. ROBERTS:** Can the minister explain what that normal education actually is for currently serving police officers? I do not include new recruits in that question.

**Mrs L.M. HARVEY:** Obviously, it is up to the commissioner to determine the most effective way of communicating these changes to police officers, but my understanding is that often this information is circulated by way of a broadcast. There is also the *From the Line* publication that comes out every week informing police officers of changes in procedures and legislation. That is another way to get the information through to police officers. Sometimes, as I understand it, modules are available through the portal to allow police officers to work through new forms, regulations and legislation. Many means are available to police. My expectation is that they will use whatever is deemed most effective to have police officers start using this legislation to best effect.

**Mrs M.H. Roberts:** So you don't know.

**Mrs L.M. HARVEY:** I think I just explained that there are lots of different ways. In addition to that, this amendment to the Misuse of Drugs Act is consistent with the format of the current act, so there are many similarities in the way that this amendment has been worded and crafted. But, yes, that education process for police officers is important, and many means are at the disposal of the commissioner to ensure that our local policing teams, response teams and organised crime teams know how to use and implement the legislation.

**Mrs M.H. ROBERTS:** The minister listed a number of individual groups within Western Australia Police. Will all police receive training, or just these select groups?

**Mrs L.M. HARVEY:** I am advised that it will be all police. In processes like this there is priority for the police officers who will be using this legislation on a daily basis. They will obviously get the top priority to ensure that they are informed most expeditiously.

**Mrs M.H. ROBERTS:** Will those who receive priority for being expeditiously informed include all metropolitan police district officers who are active in our electorates?

**Mrs L.M. HARVEY:** I will be advised by the commissioner about which of his officers need to be educated with the top priority. That is his responsibility, and I am sure that he is well equipped to determine what schedule of training needs to be implemented to ensure that the legislation can be used effectively.

**Mrs M.H. ROBERTS:** Of course I understand what the responsibilities of the Commissioner of Police are. I just thought that the minister might have some knowledge that she could share with the house. I will go back to my previous questions about the commencement clause that still have not been answered. Clause 2(b) provides for the rest of the legislation to commence on a day fixed by proclamation. I asked previously how long the minister anticipated would be the gap between the proclamation of clauses 1 and 2 and the proclamation of the rest of the legislation.

**Mrs L.M. HARVEY:** As I have said previously, I cannot give a specific time frame. We will obviously be working to make that gap as short as possible.

**Mrs M.H. ROBERTS:** The minister says that she cannot give a specific time frame. Can she give a general time frame—something, perhaps, that she is aiming for—so that we know whether she is aiming for two weeks, 10 weeks, 10 months, two years or three years? I can fully understand that she cannot give a specific time frame and say that it is going to be two weeks, three days and three hours, but can we have a general time frame that she is aiming for?

**Mrs L.M. Harvey:** I've previously answered: as quickly as possible.

**Mrs M.H. ROBERTS:** I will take from that that “as quickly as possible” for the minister might be up to three years, because that is the example we have had from her in other legislation. I will now repeat the question that I asked earlier about clause 2(b), which states —

the rest of the Act—on a day fixed by proclamation, and different days may be fixed for different provisions.

I previously asked the minister—she did not answer—why different days might be needed for different provisions, and which provisions, if any, were being referred to.

**Mrs L.M. HARVEY:** I am advised that this is a provision for the event of something unexpected occurring that would require us to have parts of the legislation proclaimed separately from other parts. We do not anticipate that, but we have put clause 2(b) in there to give us the ability to proclaim the majority of the legislation should there be a hiccup, for example, with one particular part or one particular regulation. We do not anticipate that that will be the case, but it would seem foolish to not make provision for it in this legislation and hold up the entire implementation of the legislation in the event that there might be some unexpected hold-up. In addition, our priority would be to look at proclaiming the enforcement provisions of the legislation as a priority.

**Mrs M.H. ROBERTS:** In the minister's response, she said that the government might need to not proclaim a particular part or a particular regulation. Can I just query whether she meant to say that or whether she actually believes that there are regulations here that she might not want to proclaim?

**Mrs L.M. HARVEY:** There is reference in the legislation to regulations and there is reference in the legislation, as I understand it, to —

**Mrs M.H. Roberts:** Sorry, what clause is that? What page is that?

**Mrs L.M. HARVEY:** If the member goes to page 9, there is a reference under proposed section 8U(2) to a fee to be paid by an applicant for a sample of the thing to be analysed; it can be refunded to the applicant. There are other references in the legislation to fees that can be charged for the destruction of an item. If we go again to page 9, proposed section 8U(2) states —

An application must be —

- (a) made in the prescribed form; and
- (b) made within 21 days of receipt of the notice; and
- (c) accompanied by the prescribed fee.

It may be, for example, easier and simpler for us and it may be difficult to determine the actual value of the fee, so this is just really standard drafting practice to ensure that we have the ability to proclaim all of the legislation, or part of the legislation, dependent upon the operational requirements of police at the time.

**Mrs M.H. ROBERTS:** The minister referred to a number of little parts there; there is no specific reference to regulations in any of those parts. I cannot see the word “regulation” in anything she has referred to. Is she suggesting that some parts of these proposed sections are regulations, or that the fees are regulations, or are we just confusing things? I am specifically referring to clause 2(b) and the words “on a day fixed by proclamation, and different days may be fixed for different provisions.” Yes, I can understand that they are all provisions of the bill; every clause of the bill is, in fact, a provision of the bill. I think the minister is just confusing matters by the

reference to regulations. I am not sure whether I am missing something, or whether the minister would like to explain what she meant about not proclaiming regulations under clause 2(b).

**Mrs L.M. HARVEY:** I think I have made it abundantly clear that clause 2(b) is there really as a prudent standard of drafting practice to ensure that we are covered for all contingencies. There is nothing mysterious about this. It commonly forms part of drafting practice and is there so we are covered for any contingencies that we may not have predicted as part of the legislation.

**Clause put and passed.**

**Clause 3 put and passed.**

**Clause 4: Part IIIB inserted —**

**Mrs M.H. ROBERTS:** This is quite a lengthy clause; in fact, it effectively forms the substance of the bill. I will attempt to go through it in order. There is reference under proposed section 8N to the Agvet Code of Western Australia. What is the relevance of the reference to the Agvet Code in this bill?

**Mrs L.M. HARVEY:** On page 4 of the bill is a reference under proposed section 8O to goods that are exempted from the legislation. That covers the goods that I referred to earlier in response to a question from the member for Mandurah that are covered by the Therapeutic Goods Act 1989 and the Tobacco Products Control Act et cetera, and goods defined under the Agvet Code of Western Australia. My understanding is that these chemical goods or substances prescribed under the Agvet Code are substances that are approved under that different regulatory mechanism and would not fall under this legislation.

**Mrs M.H. ROBERTS:** Still on page 2 is the definition of the word “consume”. The bill states that “consume” has the meaning given in subsection (2). Proposed section 8N(2) reads —

For this Part, a person consumes a substance if —

- (a) the substance is administered to the person, whether the person self-administers it or it is administered by another person; or
- (b) the person smokes, inhales or ingests the substance.

The word “ingests” is not actually defined there. By “ingest”, are we talking about eating, drinking, or eating and drinking, and does it cover anything else?

**Mrs L.M. HARVEY:** “Ingest” is just the common Oxford English Dictionary definition of the term, which is to take into the body as either a food or a liquid.

**Mrs M.H. ROBERTS:** I thank the minister. Does it cover injecting?

**Mrs L.M. HARVEY:** Yes, it can.

**Mrs M.H. ROBERTS:** There is reference on page 3 to the word “substance”; in fact, there are a number of references. Effectively, “psychoactive substance” is defined as something that has a psychoactive effect. Earlier in the definitions, a “psychoactive effect” is also described. However, when we get to the word “substance”, the legislation says that it includes a natural organism. I am wondering whether the minister can give examples of what natural organisms would be covered.

**Mrs L.M. HARVEY:** That would be a natural organism that causes a psychoactive effect—things such as fungi and those sorts of organisms would be covered under that definition.

**Mrs M.H. ROBERTS:** Minister, sometimes people refer to things like magic mushrooms, or whatever. Presumably that is the kind of fungus the minister is talking about there. Would it also include a substance such as coffee or caffeine?

**Mrs L.M. HARVEY:** Magic mushrooms are already listed in schedule 9 of the Poisons Act, as I understand it, and coffee is covered under the Food Standards Authority, so that would not be covered under this legislation.

**Mrs M.H. ROBERTS:** I seek further clarification. Given that mushrooms are a fungus, are there any other natural organisms that would be covered by this term; and, if so, what are they?

**Mrs L.M. HARVEY:** I am advised that there is a psychoactive substance that is being sold as having a psychoactive effect. It is actually a by-product of a natural organism. I cannot tell the member the name of it, but I can certainly provide it to her after today. We just need to do a bit more research into the name of the substance. This definition is there to cover those sorts of substances that are not necessarily artificially manufactured but are artificially sourced from a natural organism.

**Mrs M.H. ROBERTS:** I realise that there is other legislation that deals with plants such as marijuana. However, are there other plant materials that could fall under this definition of “substance”?

**Mrs L.M. HARVEY:** Yes, there would be, and that is why the legislation has been constructed in the way that it has. It covers substances that have a psychoactive effect or purport to cause a psychoactive effect. Therefore, yes, it would cover plant, chemical or other matter that is not exempt under the other regulatory mechanisms that we discussed previously.

**Mrs M.H. ROBERTS:** Still on page 3, which deals with the application of this part to particular substances, it states that this part does not apply to any of the following, and it then lists a medicine or a schedule 9 poison. Can I have an example of what those medicines or poisons in schedule 9 would be?

**Mrs L.M. HARVEY:** There is a range of medicines and poisons. Kronic is an example of a substance that has been declared under the Medicines and Poisons Act 2014. I do not have a copy of schedule 9 of that act. However, examples are acetorphine, alphamethadol, coco leaf, codoxime and phenadoxone. There are a lot of chemical substances on this list, member for Midland, and I will not bore the member by going through all of them.

**Mrs M.H. ROBERTS:** I thank the minister. The minister commenced her answer to my last question by saying that Kronic is a poison that is listed in schedule 9. Therefore, why would this legislation not apply to Kronic?

**Mrs L.M. HARVEY:** The specific chemical composition of Kronic is covered under schedule 9. However, obviously there are synthesised versions and amendments that are similar to Kronic, and they would be covered under this Misuse of Drugs Act amendment.

**Mrs M.H. ROBERTS:** Minister, I need some further clarification. It states that this part does not apply to any of the following, and it then lists a medicine or a schedule 9 poison. The minister has advised that the chemical composition that makes up Kronic is listed in schedule 9; therefore, that is covered under other legislation. How do the penalties under that other legislation and the penalties under this legislation compare, and why does it make sense that Kronic with a particular chemical composition as listed under schedule 9 does not come under this bill, yet a substance that could have a similar chemical composition would come under this bill?

**Mrs L.M. HARVEY:** I am advised that the misuse or sale of any substance that has been scheduled under schedule 9 of the Medicines and Poisons Act is already covered under the general provisions of the Misuse of Drugs Act. Therefore, those drugs that have been scheduled under schedule 9 will fall into the penalty regime that exists under the Misuse of Drugs Act, but after this amendment passes through Parliament, so too will psychoactive substances or anything that is promoted as a psychoactive substance.

**Mrs M.H. ROBERTS:** Can the minister explain to me, then, why at proposed section 8Q, for example, penalties are listed, and why we are not relying just on the penalties that are provided for under the Misuse of Drugs Act?

**Mrs L.M. HARVEY:** It is because the offences that we are creating under the Misuse of Drugs Act amendment for the sale of psychoactive substances were not covered previously under that act and will be covered only once this amendment goes through. Therefore, the penalties need to be prescribed as part of the amendment.

**Mrs M.H. ROBERTS:** Kronic is clearly a psychoactive substance that is currently covered. Therefore, the minister's answer seems to be contradictory, and I ask for some further explanation.

**Mrs L.M. HARVEY:** I am advised that the drugs that have been subject to schedule 9 would fall under the penalty regime in section 34 of the Misuse of Drugs Act, and these new substances that have been described in these new offences would fall under the amendment.

**Mrs M.H. ROBERTS:** Is there any variation between the penalties in section 34 of the Misuse of Drugs Act and the penalties that are listed in this bill?

**Mrs L.M. HARVEY:** Yes, there are variations in the penalties, and obviously there are variations with respect to the quantities that are being sold et cetera. The penalties under section 34 are imprisonment for up to 25 years and a fine not exceeding \$100 000, dependant, of course, upon what the person is convicted of. There are also conspiring offences and a range of other offences. As we go through the Misuse of Drugs Act, the member will see that there are different penalty and imprisonment regimes depending on the particular drug and the substances that have been included in the Misuse of Drugs Act.

**Mrs M.H. ROBERTS:** There is no mention in proposed section 8Q of different penalties for different quantities of drug. Therefore, it would appear with respect to this bill that regardless of whether the person is manufacturing five grams, 50 grams or 500 grams, the penalty is the same—that is, a fine of \$48 000 or imprisonment for four years, or both. How does that fit together with the alternative penalties that are contained more broadly in the Misuse of Drugs Act that differentiate on the basis of the quantity of drug that is manufactured or sold?

**Mrs L.M. HARVEY:** The member is quite correct that the quantities of psychoactive substances being sold have not resulted in an accelerated penalty or an increased penalty in this amendment. That is because none of

these substances has yet been subject to scheduling and harm assessments have not been done, or other considerations given that occur with substances that are prescribed more serious penalties under the Misuse of Drugs Act. Obviously, as an emerging substance, it is difficult to put in place an accelerated penalty until we understand the level of harm resulting from these substances in comparison with the substances that have previously been listed.

**Mrs M.H. ROBERTS:** In reference to my questions about clause 4, proposed section 8O, the minister said that Kronic is already on the drug schedule so I gather that Kronic's effects have been assessed. Is quantity a factor that is taken into account in the penalties for Kronic under the Misuse of Drugs Act?

**Mrs L.M. HARVEY:** As yet, we do not have deeming levels for quantities for psychoactive substances, which includes Kronic.

**Mrs M.H. ROBERTS:** Still dealing with proposed section 8O, proposed subsection (1) (a)(i) and (ii) states —

- (i) a medicine or a Schedule 9 poison as those terms are defined in the *Medicines and Poisons Act 2014* section 3; or
- (ii) if the *Medicines and Poisons Act 2014* section 137 has not commenced — a medicine as defined in the *Poisons Act ...*

It goes on. Essentially, my question is: when does the minister expect that the Medicines and Poisons Act 2014 section 137 will commence? Can the minister give me any advice about the current status of the Medicines and Poisons Act 2014 and the proclamation of the various sections?

**Mrs L.M. HARVEY:** I will have to seek some advice from the Minister for Health about that. I do not have the information about when section 137 of the Medicines and Poisons Act 2014 will commence.

**Mrs M.H. ROBERTS:** Perhaps the minister could advise whether or not she thinks that it will make a material difference to the effectiveness of this bill. Can the minister advise whether it is preferable for that section to commence at an earlier date, or whether it does not matter at all?

**Mrs L.M. HARVEY:** I am advised it will not have any material effect.

**Mrs M.H. ROBERTS:** I am still dealing with proposed section 8O on page 4 of the bill. Other products are referred to, such as therapeutic goods, as defined in the Therapeutic Goods Act 1989. Basically, it is spelling out that this part does not apply to any of the following: those medicines and poisons in proposed section 8O(1)(a); those therapeutic goods listed in paragraph (b); tobacco in paragraph (c), which is dealt with under the Tobacco Product Control Act 2006 glossary; substances referred to in paragraph (a) or (b) of the definition of "liquor" in the Liquor Control Act; or "food" as defined in the Food Act 2008—if one wanted to get on top of all this, one would have to look up an awful lot of acts. The list to which it does not apply continues in paragraph (f), a chemical product, as we have referred to previously, as defined in the Agvet Code; paragraph (g), a plant or fungus, or an extract from a plant or fungus; and paragraph (h), a substance of a class prescribed by the regulations. It would seem that further exemptions, as I will call them, can be made in the regulations that we have not yet seen. I turn my attention to proposed paragraph (g), which again refers to a plant or fungus, or an extract from a plant or fungus. If I am reading it correctly, it states that this part does not apply to a plant or fungus, or an extract from a plant or fungus, yet when we were dealing with the term "substance", as in a psychoactive substance, the minister referred to a fungus being one of those things that would be covered as a natural organism. I am wondering whether that response contradicts what is set out in proposed section 8O(1)(g).

**Mrs L.M. HARVEY:** The strength in the bill is around the definition of "psychoactive substances" and the substances having a psychoactive effect. The advice I have been given is that the exemption of a plant or a fungus, or an extract of a plant or a fungus, does not necessarily override that substance coming into the legislation if it has a psychoactive effect or is a psychoactive substance.

**Mrs M.H. ROBERTS:** This is essentially the contradiction, as I see it: in the minister's response earlier when I asked her about the definition of "substance", which is defined on page 3 of the bill, it states that substance includes a natural organism and she advised me that a fungus would be included there. Yet when I look at proposed section 8O, it essentially lists all the exemptions and it states that a plant or fungus, or an extract from a plant or fungus, is effectively exempted from this legislation. If I am not reading that correctly, can the minister please explain what appears to me to be contradictory?

**Mrs L.M. HARVEY:** I am advised that if we go back to where the bill states that the definition of "substance" includes a natural organism, that gives us the ability to include any natural organism but there is an ability to exclude those plants or fungi that do not have a psychoactive effect. That is my understanding of the intention of proposed paragraph (g).

Mrs Michelle Roberts; Mr Paul Papalia; Mrs Liza Harvey; Mr David Templeman; Ms Simone McGurk

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**Mrs M.H. ROBERTS:** I am not going to labour this point any longer but proposed paragraph (g) does not state a specific plant or fungus; it does not limit it at all. It is just generic; the total group of plants and fungi. I see it as a plant or fungus, or an extract from a plant or fungus. On a basic reading, I would think that that covers all plants and all fungi because it states that that part “does not apply to any of the following”. If the minister thinks that she has clarified that, I am happy enough to move on, but I do think it is confusing.

My next questions pertain to how the minister derived the fines at proposed section 8Q, for example—the \$48 000 or four years’ imprisonment. Why are those fines not defined in penalty units? Why are dollar amounts and year amounts used?

*Sitting suspended from 6.00 to 7.00 pm*

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.