

MISUSE OF DRUGS AMENDMENT BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Mr R.F. Johnson (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR R.F. JOHNSON (Hillarys — Minister for Police) [12.30 pm]: I move —

That the bill be now read a second time.

During the 2008 election campaign, the Liberal Party released a policy document titled “Tackling Illicit Drugs in our Community: Law Enforcement”. The document outlined four law enforcement initiatives to tackle illicit drugs in WA. The first of the initiatives has been addressed by the Cannabis Law Reform Act 2010, which came into effect on 1 August 2011.

The three remaining initiatives to be addressed by the Misuse of Drugs Amendment Bill 2011 will crack down on drug dealers who sell or supply illicit drugs to children; protect children from endangerment by tightening sentencing for exposing children to harm or the danger of serious harm as a result of the manufacturing of prohibited drugs and the cultivation of prohibited plants; and ban the sale of all illicit drug use paraphernalia in Western Australia, such as cocaine-snorting kits.

Crack down on drug dealers who sell or supply illicit drugs to children: Drug use by children is an issue of public health and broader community concern, especially given the association between early initiation into drug use and subsequent dependence and negative effects. At present, the Misuse of Drugs Act 1981 makes it an indictable offence for a person to sell or supply, or offer to sell or supply, a prohibited drug to another without a lawful reason. The maximum penalty for the sale or supply of a prohibited drug, other than cannabis, is a term of imprisonment of 25 years or a fine of \$100 000, or both. The maximum penalty for selling or supplying cannabis is a term of imprisonment of 10 years or a fine not exceeding \$20 000, or both.

Currently, the act does not provide a separate offence or an aggravated offence for the sale or supply of a prohibited drug to a child. Instead, it is left to the discretion of the judge or magistrate sentencing an offender to impose a more severe sentence where the offence involves a child, subject to the prescribed maximum penalty. It is proposed to tighten up these current offence provisions for cases in which the victim of the offence is a child. Specifically, it is proposed that the range of sentencing options available to a court for such offences will be limited, and mandatory terms of imprisonment will be imposed for repeat offenders.

It is proposed that for a first offence, the sentencing options available to the courts be limited to include only: suspended imprisonment, part 11 of the Sentencing Act 1995; conditional suspended imprisonment, part 12; and imprisonment, part 13. This will ensure that lower-level sentencing options, such as intensive supervision orders, community-based orders, fines, and conditional release orders, will not be imposed upon offenders who are found guilty of the serious crime of supplying prohibited drugs to children. For a second or subsequent offence, the court will be required to impose a term of imprisonment, under part 13 of the Sentencing Act 1995, of at least six months.

It is recognised that there may be situations where a person under 18 years of age sells or supplies drugs to another person under 18 years of age. In such situations, restriction of the sentencing options available to the courts may not be appropriate. It is therefore proposed that in the case where a person under 18 years of age is found guilty of selling or supplying drugs to another child, the maximum penalty available will remain at 25 years’ imprisonment; however, all sentencing options will be available to the courts.

Protect children from endangerment by tightening sentencing for exposing children to harm or the danger of serious harm as a result of the manufacturing of prohibited drugs and the cultivation of prohibited plants: Clandestine laboratories and illegal hydroponic set-ups pose serious health and safety risks to children as well as others in the community. The chemicals used in clandestine laboratories are extremely volatile and can explode, ignite and/or emit colourless and odourless lethal gases. These chemicals produce toxic compounds and by-products, which can be ingested, absorbed through the skin, or inhaled. Exposure can result in nausea, chest pain, eye and skin irritations, burns, and death. Children are particularly vulnerable to negative health effects and death from exposure to the chemicals used in clandestine laboratories due to their lower tolerance to chemical toxicity. Further, a child, by virtue of his or her age, might not be aware of the danger of clandestine laboratories or might not be able to leave.

Between 1 January and 31 December 2010, the organised crime squad of WA Police attended 133 clandestine laboratories in Western Australia. Of these laboratories, 82 per cent, or 110, were located within the metropolitan

area. Of those clandestine laboratories attended by the organised crime squad in the metropolitan area, children were present at the premises, or identified as being a resident of the premises, in 34, or 30 per cent, of cases. More specifically, a total of 46 individual children were identified as either present or resident at detected clan labs in 2010. These children were exposed, or at risk of being exposed, to toxic and explosive materials. Of the 46 children, 22 were present during the manufacturing process, and a further 24 had been present at some time during the preparation or storage process.

Additionally, the possession and storage of certain category 1 and 2 items can be inherently dangerous and can endanger and harm those who are exposed to them. Category 1 and 2 items include an array of chemicals, commonly referred to as precursors, including pseudoephedrine, chromic acid, hydrobromic acid and benzyl bromide. These chemicals are dangerous on their own, and even more so if mixed with other chemicals. The possession and storage of these items can potentially endanger or harm children, even if the person manufacturing prohibited drugs has not yet commenced the manufacturing process.

The bill provides that, for a first offence, if a person, who was an adult at the time the offence was committed, is convicted of manufacturing or preparing a prohibited drug, cultivating a prohibited plant, or possessing category 1 or 2 items, and the offence was committed in circumstances which endangered the life, health or safety of a child under the age of 16 years, the court must use only one of the following sentencing options: suspended imprisonment; conditional suspended imprisonment; or a term of imprisonment. For a second or subsequent offence, the court will be required to impose a term of imprisonment, under part 13 of the Sentencing Act 1995, of at least six months.

When a person, who was an adult at the time the offence was committed, is convicted of manufacturing or preparing a prohibited drug, cultivating a prohibited plant, or possessing category 1 or 2 items, and the offence was committed in circumstances that caused bodily harm to a child under the age of 16 years, the court must impose a term of imprisonment of at least 12 months and must not suspend the term of imprisonment.

It should be noted that while most drug manufacture takes place in residential premises, the reforms in the bill in relation to exposing or causing harm to children are not limited to these places. For example, we have seen clan labs being set-up in car boots et cetera. Regardless of where this drug manufacture or cultivation takes place, it is the exposure or harm that is caused to children that the bill seeks to capture. This is equally the case when we have recently seen clan labs operating in the vicinity of schools and leaving children attending these schools, et cetera, to be exposed to harm.

The amendments will apply only if the children affected are under the age of 16 years. The age of 16 years has been utilised within other Western Australian legislation that contains provisions relating to the welfare and protection of children. For example —

Section 263 of the Western Australian Criminal Code 1913 states —

It is the duty of every person who, as head of a family, has the charge of a child under the age of 16 years, being a member of his household, to provide the necessities of life for such child, and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty whether the child is helpless or not.

Section 344 of the Criminal Code 1913 provides —

Any person who, being the parent of a child under the age of 16 years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a crime, ...

Section 64 of the Gaming and Wagering Commission Act 1987 provides that social gambling may not be —

... conducted in circumstances that indicate that the mental, physical or moral welfare of any child under the age of 16 years is likely to be in jeopardy;

Ban the sale of all illicit drug-use paraphernalia in Western Australia, such as cocaine-snorting kits: Drug-use paraphernalia are any products marketed to drug users to assist them in taking illicit drugs, such as cocaine kits, bongs and ice pipes. Generally speaking, a cocaine kit comprises two or more items, such as a razor blade, a tube, a mirror, a scoop or a glass bottle, packaged as a unit apparently for the purposes of preparing for introduction, or for introducing, cocaine into the body. The selling or supplying of drug-use paraphernalia can be seen to normalise and promote the use of illicit drugs. Under Western Australian law, certain drug-use paraphernalia are already prohibited from being sold, supplied or possessed. For example, under the Misuse of Drugs Act 1981, it is an offence to sell or supply ice pipes or cannabis-smoking paraphernalia. The penalties for these offences range from up to two years' imprisonment to a fine of up to \$24 000. In addition, the Misuse of Drugs Act 1981 makes it an offence for a person to possess any pipes or other utensils for use in connection with

the smoking of a prohibited drug or prohibited plant in or on which there are detectable traces of a prohibited drug or prohibited plant. The penalty for this offence is a fine of up to \$3 000, a term of imprisonment not exceeding three years, or both.

In line with its illicit drugs policy, the bill proposes that the Misuse of Drugs Act 1981 be further amended to make it an offence to sell any drug-use paraphernalia to both adults and children, with the inclusion of more severe penalties for the sale of such paraphernalia to children. This amendment will encompass all the prohibitions that are presently in place in Western Australia and will ensure that the sale of such equipment to both adults and children is an offence. It is proposed that it will be an offence for a person to sell or offer to sell, or display or authorise to allow to be displayed, drug-use paraphernalia for sale in a shop or other retail outlet. There will be two separate penalties for this offence. One penalty will specifically address the issue of selling drug-use paraphernalia to children, and the second penalty will relate to sales occurring in all other circumstances. The maximum penalty for an offence committed in relation to a child under the age of 18 years is proposed to be a fine of up to \$24 000 or two years' imprisonment. In any other case, the proposed penalty for such an offence will be a fine of up to \$10 000.

It should be noted that the provisions currently contained within section 5(1)(d) and section 5(3) of the Misuse of Drugs Act 1981 will be repealed and replaced with proposed section 7B(6) and proposed section 7B(7) respectively. Section 5(1)(d) relates to the possession of any pipes or other utensils that are used in connection with prohibited drugs and contain traces of prohibited drugs. Section 5(3) details the specific circumstances in which an offence is not committed under section 5(1)(d). It also should be noted that proposed section 7B(6) refers specifically to drug paraphernalia that contain traces of prohibited drugs and plants, rather than the terms "pipes" and "other utensils". The new terminology will expand the application of proposed section 7B(6) compared with that of section 5(1)(d), as the definition of "drug paraphernalia" is broader than the definitions of "pipes" and "other utensils".

Additionally, it was identified that the maximum monetary penalty of \$3 000 for the current offence in section 5(1)(d) of possessing pipes or other utensils containing traces of prohibited drugs or prohibited plants does not reflect the severity of the offence and is out of step with the penalties that will be available to the courts when sentencing persons for selling drug-use paraphernalia. The monetary penalty for the offence of possessing drug paraphernalia with traces of a prohibited drug or plant on it, as provided for in proposed section 7B(6), will be increased from the \$3 000 currently available for offences committed under section 5(1)(d) of the Misuse of Drugs Act 1981 to a maximum of \$36 000. This figure is consistent with the principles of the Sentencing Act 1995, which provides that the monetary equivalent for terms of imprisonment is \$1 000 per month of imprisonment. The maximum term of imprisonment for an offence committed under proposed section 7B(6) will remain at three years, which is identical to the maximum term of imprisonment presently available for offences committed under section 5(1)(d).

In summary, the bill provides offences and penalties for displaying drug paraphernalia for sale in a retail outlet, selling drug paraphernalia to an adult, selling drug paraphernalia to a child, and possessing drug paraphernalia containing traces of a prohibited drug or prohibited plant. Additionally, the bill provides appropriate defences to the offences of displaying and selling drug paraphernalia. This will ensure that certain drug paraphernalia may be displayed or sold in prescribed circumstances, such as as part of a needle-exchange program. The prescribed persons, drug paraphernalia and circumstances that allow for the display or sale of drug paraphernalia will be detailed in regulations.

Consequential amendments to other legislation: The bill will make consequential amendments to the Bail Act 1982, the Spent Convictions Act 1988 and the Working with Children (Criminal Record Checking) Act 2004. The consequential amendment to the Bail Act 1982 is minor in nature. The bill will amend schedule 2 of the Bail Act 1982 to include in the list of serious offences the offence of endangering or harming a child through the possession of specified quantities of category 1 and 2 items, as in section 14(1) of the Misuse of Drugs Act 1981. It should be noted that the offences relating to endangerment and harm through the manufacture of prohibited drugs and prohibited plants are not included in this consequential amendment as the general provisions that relate to manufacture and cultivation, which are in section 6(1)(b) and section 7(1)(a) respectively, are already in the schedule.

The consequential amendment to the Spent Convictions Act 1988 is minor in nature. The Cannabis Law Reform Act 2010 inserted section 11(6) into the Spent Convictions Act 1988. Section 11(6)(a)(i) of the Spent Convictions Act 1988 refers to an offence involving cannabis committed under section 5(1)(d)(i) of the Misuse of Drugs Act 1981. As proposed section 7B(6) will replace section 5(1)(d), it is appropriate that proposed section 7B(6) also be referred to in section 11(6) of the Spent Convictions Act 1988.

The consequential amendment to the Working with Children (Criminal Record Checking) Act 2004 will insert into schedule 2 of this act proposed section 7B(4), which relates to the sale of drug paraphernalia to children.

The effect of this amendment is that the sale of drug paraphernalia to a child will be considered a class 2 offence, and any person with a charge or conviction for this offence who seeks an assessment notice allowing them to work with children will be issued with a negative notice by the CEO of the Department for Child Protection.

Summary: The government has introduced this bill to ensure that the community is further protected from the harms caused by illicit drugs. This bill will fulfil the election commitment made by the government, which promised to crack down on those who sell or supply drugs to children, to provide penalties for endangering or harming people through the manufacture of prohibited plants and the cultivation of prohibited drugs, and to ensure that all drug-use paraphernalia are prohibited from sale in Western Australia.

Debate adjourned, on motion by **Mr D.A. Templeman**.