MISUSE OF DRUGS AMENDMENT BILL 2011

Second Reading

Resumed from 8 September.

MR R.F. JOHNSON (Hillarys — Minister for Police) [8.19 pm] — in reply: I interrupted my response on this bill.

Mr P. Papalia interjected.

Mr R.F. JOHNSON: You have a very dark soul, do you know that? You really have a very dark soul.

The member for Girrawheen asked some questions about the Misuse of Drugs Amendment Bill 2011.

Ms M.M. Quirk: I cannot hear the minister very well. Can he speak up?

Mr R.F. JOHNSON: I would love to. The member wanted to have some questions answered about the Misuse of Drugs Amendment Bill.

Ms M.M. Quirk: I would like to hear the answers, minister. I cannot hear.

Mr R.F. JOHNSON: The member has people talking around her.

The member for Girrawheen said —

> I hope that the minister in his response will indicate or give some commitment that those particular provisions will not come into force until such time as the regulations have been promulgated.

The SPEAKER: Members, I have given the call to the Minister for Police. I understand that some people in this place are interested in what is going on in here. I would like those people to be provided with the opportunity of hearing what the Minister for Police is saying. If members are having a conversation that is not necessary, please take it outside. Pay courtesy to other members in here who want to hear what the Minister for Police is saying. I am going to give the call back to the Minister for Police.

Mr R.F. JOHNSON: The member for Girrawheen, who is the shadow spokesperson for this particular area, was concerned about proposed section 7B, which deals with the sale of drug paraphernalia. She commented that regulations would probably be needed to give effect to the defences available under this proposed new section of the Misuse of Drugs Act. She commented, and I will repeat —

> I hope that the minister in his response will indicate or give some commitment that those particular provisions will not come into force until such time as the regulations have been promulgated.

Currently under the Misuse of Drugs Regulations, items such as hookahs and shishas are excluded from the definition of "cannabis smoking paraphernalia", which I am sure the member is aware of. Regulations will be made under proposed section 7B of the Misuse of Drugs Act to also exclude such items, so they will be excluded.

Ms M.M. Quirk: The problem is that that section will create a hiatus if the act comes into force prior to the regulation. If there is a gap between when the act comes into force and when the new regulations come into force, will there not be an issue?

Mr R.F. JOHNSON: I think we will deal with that, certainly.

Ms M.M. Quirk: If the minister agrees not to proclaim that section until such time as regulations are promulgated, that will not be a problem, will it?

Mr R.F. JOHNSON: Regulations will be made under the proposed section 7B of the Misuse of Drugs Act to also include those items. In addition, regulations will be made to provide that needle and syringe programs that have been approved under the Poisons Act are also not captured by the provisions of proposed section 7B.

Clause 6 of the bill, which contains the proposed section 7B, and clauses 5, 7, 8, 12, 13, 14 and 15, which are all consequential amendments, will not be proclaimed until these regulations are in place. I think that answers the member's query. Regulations will be in place. We will not be proclaiming the sections until they are in place.

Some other comments were made by one or two members. Quite frankly, to save a bit of time, I am sure I will probably get asked one or two questions in consideration in detail. I will be very happy to give the information once we are in that particular situation.

This is a very important piece of legislation. It fulfils an election commitment of the Liberal Party. The whole purpose of this bill is to try to deter people from either selling or supplying drugs to children, which I think most

people would find is a disgraceful thing for anybody to do. It is also trying to prevent children from being harmed in clandestine drug laboratories. At the moment the penalties are quite severe, but of course we have seen quite recently that courts do not always give out the sentences that I think the public expect them to. That is why we have included in this bill a new form of limited options for the judiciary in relation to the sentences that we believe it should have available for those people who contravene the laws.

There are not many clauses to this bill. The member might have a problem with only two of them. The member for Girrawheen has some amendments on the notice paper that she will obviously move. I am very grateful to the member for Girrawheen for her contribution. I know she is very keen about this particular area, as I am. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr R.F. JOHNSON: I introduce my advisers. On my right, I have Malcolm Penn, assistant director, legal and legislative services directorate, WA Police. Immediately opposite me —

Point of Order

Mr P.T. MILES: We cannot hear the minister or anybody on the floor, with the noise that is around. Also, I do not know whether the microphones are working. It is extremely hard to hear.

Mr W.J. JOHNSTON: I could not hear the minister at all during his reply to the second reading debate. If you, Mr Acting Speaker, could request the minister to speak in a well-modulated voice, that would assist everybody in the chamber to hear what he is saying.

The ACTING SPEAKER (Mr J.M. Francis): It will assist if everyone keeps their interjections and further conversations to an absolute minimum, unless they have been given the call. I ask the minister to keep that in mind, and I ask the attendants to double-check that the microphones are working.

Debate Resumed

Mr R.F. JOHNSON: I introduced Malcolm Penn. Directly opposite me is Charlie Carver, detective superintendent, serious and organised crime division, WA Police.

Point of Order

Mr W.J. JOHNSTON: Mr Acting Speaker, nobody on this side of the chamber has any chance of hearing the minister unless he speaks up and in a well-modulated voice so that the rest of the chamber can hear him. It would probably assist as well if he did not look down when he is reading, because it means that he is not facing the microphone. If you would please assist us, Mr Acting Speaker.

The ACTING SPEAKER (Mr J.M. Francis): Member for Cannington, that is not a point of order. I am going to ask the minister to continue. I am going to ask the minister to keep in mind, though, that —

Mr R.F. Johnson: I want him to hear every word I say.

The ACTING SPEAKER: That is right; thank you, minister. I am sure you do. I am going to ask for everyone to take a chill pill, and listen in silence. Member for Cannington, I do not want to hear that point of order from you again.

Debate Resumed

Mr R.F. JOHNSON: Diagonally opposite is Lucas Ride, senior policy officer, serious and organised crime division, WA Police.

Mr M.P. WHITELY: I want to make a comment that I highlighted in my second reading contribution; that is, I believe that the title of this bill could have been better named. If it was named the "Misuse of Illicit Drugs Amendment Bill 2011", that would be a better title, because it fails to deal with the significant problem of the misuse of licit drugs—legal drugs. This bill is very narrow in its scope. For all the reasons I outlined in my second reading contribution, which, despite the minister's complete dismissal of my speech at the time, gained considerable support from the State Coroner, the Australian Medical Association, the Western Australian Branch of the Pharmacy Guild of Australia and the editorial writers of Western Australia —

Mr R.F. Johnson: You're a star.

Mr M.P. WHITELY: I thank the minister.

Mr R.F. Johnson: But it had nothing to do with this bill.

Mr M.P. WHITELY: That is what I am saying. This bill would be better titled the "Misuse of Illicit Drugs Amendment Bill 2011"—I will not labour the point—because it fails to deal with the significant problem of the misuse of licit drugs, legally prescribed drugs, which is a huge and growing problem. As I said at the time, it is beyond the wit and wisdom of the Minister for Police to deal with it.

Mr R.F. Johnson: ADHD—that's all you ever talk about.

Mr M.P. WHITELY: Did I mention ADHD in my opinion piece?

Mr P. Papalia: This is a demonstration and confirmation of exactly what he just said. You're incapable of comprehending it. It's beyond your wit.

Mr R.F. Johnson: I'll come to you.

Mr M.P. WHITELY: If that was all I ever talked about —

The ACTING SPEAKER (Mr J.M. Francis): Member, take a seat. Members, before we even started, I had three points of order, with members claiming they could not hear the minister. The number of interjections and conversations in this chamber is totally unacceptable. Therefore, I am going to consider those three points of order, and if I hear anyone speak or engage in interaction, other than with the permission of the minister and the person who is speaking, I will call people to order.

Mr M.P. WHITELY: Thank you, Mr Acting Speaker. The minister interjected and said that all I ever talk about is ADHD. I was actually talking about the misuse of licit drugs. If the minister could read a whole article, and if he had read *The West Australian*, he would have seen that I did not mention the term ADHD once in that article. Frankly, if all I had ever discussed in my entire political career was ADHD, I would have made a thousand times the contribution that the minister has made since he became a member of this place. Frankly, the minister is a disgrace, and it is an embarrassment that he is a minister of the Crown. Nonetheless, what we are debating is the title of the bill—the Misuse of Drugs Amendment Bill 2011. As I have said, and as I said in my second reading contribution, it would have been far more accurate to narrow the title to the "Misuse of Illicit Drugs Amendment Bill 2011" because the bill does nothing to deal with the large and growing problem of the misuse of licit, or legally prescribed, drugs.

The ACTING SPEAKER: Before I give the member for Cannington the call, I just pass on some advice that I have just received from the Speaker that the PA system at the back of the chamber is not working. I do not believe that it can be repaired tonight, so I ask everyone again to consider that. We will persevere, but I want speakers to be heard in silence.

Mr W.J. JOHNSTON: I support the member for Bassendean's comment. In particular, when we later have to examine proposed section 7B, to be inserted by clause 6 of the bill, we will get into the question of the difference between drugs and illicit drugs. This bill is typical of many of the things that are done by the minister. I will quote the Premier in a debate on 23 September 2004 when he said, "It was either a lie or a massive broken promise." That is the sort of stuff that we get from the Minister for Police. Therefore, it is not a surprise that this bill is not properly named when we have the sort of minister who is not capable, as we know and as we have discussed previously. Therefore, we should properly name this bill, particularly when later in consideration in detail we will get to clause 6, which proposes to insert a new section 7B. I will explain in detail why that provision needs to be separated out between legal drugs and illegal drugs. Therefore, we should have a better short title to make it clear that we are dealing with a bill that does not relate to legal drugs; it relates only to illegal drugs. There are other provisions in the bill that I can go through. As I said, to quote the Premier, "It was either a lie or a massive broken promise", which, of course, is what we expect from this sort of minister who is not capable of doing his job. He thinks that the operation of this house is not about proper debate; he thinks it is about his opportunity to grandstand. As the Premier said on 11 November 2004, "The people will remember the great lie of the election campaign". Whenever I look at the minister, in fact, that is what I think about—the great lie of the election campaign.

The ACTING SPEAKER: Member for Cannington, we are dealing with clause 1—the title of the bill.

Mr W.J. JOHNSTON: Yes.

The ACTING SPEAKER: It is not your opportunity to enter into general debate. I ask you to come back to clause 1 or I will sit you down.

Mr W.J. JOHNSTON: Thank you very much, Mr Acting Speaker. That is exactly what I am doing.

Mr P.B. Watson interjected.

The ACTING SPEAKER: Member for Albany, I call you to order for the second time today for that comment.

Mr W.J. JOHNSTON: As I said, we are dealing with the question of whether this short title properly describes the bill that is being considered by us. As I understand from reading and listening to the minister's comments regarding the second reading of this bill, this bill is about illegal drugs—not legal drugs. When we get further into the bill, we will see how this is important to us. At the moment we are dealing only with clause 1, the short title, so I am not at liberty to go through the bill, but I can. I have drawn members' attention to clause 6 of the bill, which proposes a new section 7B, to illustrate my point. However, as I said, it is the sort of thing that we expect from the minister. Every time I look at the minister, I think of the Premier's words when he said that people will remember the great lie. That is what I remember every time I look at the minister. As I said, I am quoting what the Premier is reported as saying in *Hansard*. The Premier's words ring in my ears when I see the minister because of the job that he does and the way that he goes about it with his bumbling, usual approach and with his incompetence and inability to do anything. Therefore, in trying to describe this bill, which is the purpose of the short title, I have another suggestion from the Premier for the minister. A quote from the *Hansard* of 16 June 2011 is "shut up". The Premier says plenty of things in this chamber, and when I hear them, in my head I remember the Minister for Police because of the very effective way in which the Premier's words, to me, describe the Minister for Police.

The ACTING SPEAKER: Member for Cannington, I made myself perfectly clear earlier. Take a seat because you are not getting back up again. I am sitting you down. What you are talking about right now has absolutely no relevance to the title of the bill.

Mr P. PAPALIA: I have suddenly found an interest in the title of the bill. I agree with the two previous speakers on this side of the house that the title of the bill reflects and confirms the inadequacy, the incompetence and the complete inability of this minister to get anything right—to complete any task to a satisfactory standard. What we have here is an obvious indication that the minister is incapable of comprehending a reasonable argument. The member for Bassendean made a very reasoned contribution to this debate earlier. He did not mention ADHD once. What he was talking about was the difference between licit drugs and illicit drugs and the fact that this legislation focuses solely on illicit drugs, when there is a very real, very serious problem in our community with licit drugs. I think it is quite reasonable to suggest that this bill should have its title amended to identify and correctly, completely and professionally acknowledge the fact that it does not deal with all drugs; it deals only with illicit drugs, and there may well be the need for future action to deal specifically with licit drugs. In fact, if the minister had anywhere near the appropriate level of intellectual capacity that one would normally assume any minister of the Crown would be in possession of, he would have taken the advice, the assistance, that was provided by the member for Bassendean's speech, in which the member suggested a very simple solution, a very simple first step at least, to the problem of licit drugs. I know that the Acting Speaker is attempting to maintain a degree of order and the reasonable pursuit of this debate, particularly in light of the fact that the microphones are malfunctioning, but I find it unfair for people on the other side of this place, particularly the minister, to suggest that somehow people should not make their contributions. This evening we have already witnessed the truncation of a reasonable debate, and the opportunity taken. I hope it was not done by the Minister for Local Government; I hope he did not have anything to do with it, but if he chose to avoid his responsibility to perform what would normally be assumed to be a standard procedure, to reply to a third reading debate, I think it is shameful. I also think that any attempt by members in this place to indulge the Minister for Police and allow him to avoid his responsibilities in any way would be equally shameful.

Clause put and passed.

Clause 2: **Commencement —**

Ms M.M. QUIRK: I know that the minister gave us some assurances about proposed section 7B and the exemption by way of regulation of some forms of drug paraphernalia, but clause 2 deals with when the bill comes into operation. Clause 2 states —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

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

I ask now whether the minister will give an indication that he will consider a different day for proclamation until such time as there will be a seamless promulgation of the regulations for the sale of drug paraphernalia.

Mr R.F. JOHNSON: Yes, I am very happy to say that I would agree with that, definitely. I can see the sense and the logic of what the member for Girrawheen is saying, and yes, we will do it.

Clause put and passed.

Clause 3: Act amended —

Mr W.J. JOHNSTON: I think this is the sort of legislation—because we have seen the Minister for Police previously not being able to do bills of this house in the appropriate order—that would be very much benefitted by a quick trip to a committee.

Debate interrupted.

[Continued on page 7539.]

Referral to Community Development and Justice Standing Committee — Motion

MR W.J. JOHNSTON (Cannington) [8.43 pm]: I move —

> That the Misuse of Drugs Amendment Bill 2011 be referred to the Community Development and Justice Standing Committee for examination and report.

I notice that I now have 60 minutes on the clock. The matter of referring bills to a committee at this stage of debate is a very important issue, because this is not normally the stage at which bills are referred. I make an example to illustrate the point that I am making. Recently, we referred the Franchising Bill to the Economics and Industry Standing Committee, but that referral was done before the second reading. That means that when the Franchising Bill went off to the Economics and Industry Standing Committee, the entire bill, including the policy issues surrounding it, were open for debate by the Economics and Industry Standing Committee. This motion has been moved after the second reading debate has concluded and before the third reading has been proposed, and under our standing orders, it means the only elements that are capable of being reviewed by the standing committee that I have referred to—the Community Development and Justice Standing Committee—are the technical aspects of the bill. Even though we have already passed clauses 1 and 2, the committee will be capable of reviewing clauses 1 and 2 of this bill. It will not just be the following clauses that are capable of being referred. This goes to the heart of the practices of the house. I am sure that the Acting Speaker will remember that in my maiden speech to this chamber, I discussed the need to have an increased operation of committees of the Parliament. I think that it is a very significant issue. It is one of the issues that, as I said, I talked about in my inaugural speech. As the Acting Speaker understands, an inaugural speech is one of those few occasions on which we are able to rove over a wide aspect of policy issues, and indeed an inaugural speech is intended to allow us to set out the foundations of our future operation in the Parliament. Therefore, we can see that my referral of this bill to a standing committee is entirely consistent with issues that were raised on the very day that I first spoke in the chamber. In fact, on 11 November 2008, I think the Acting Speaker himself made his speech on the same day or certainly, I know a number of my parliamentary colleagues in this place —

Mr P. Abetz interjected.

Mr W.J. JOHNSTON: Yes, member for Southern River, that is right. I remember that; he followed me, in fact. I cannot remember who followed him, but I remember that day; it was a very important day in my career, as I am sure were the days of other members' inaugural speeches. Indeed, I am sure that the Minister for Police clearly remembers his own inaugural speech.

The idea of a parliamentary committee is very important. Many people outside this chamber are not aware of the work of parliamentary committees. One of the great things about parliamentary committees is that party politics do not intervene. The Acting Speaker is on a parliamentary committee—I cannot remember which one; maybe it is two committees. That must be a very high workload, because I know of the enormous workload that I get from the Economics and Industry Standing Committee. Because of the nature of the parliamentary committee process, we can cut away the politics of things and actually go to the heart of the issues involved and ask, "What is it that the state really needs? Let's ignore politics and just look at what is needed for the bill." We can ask what is going to be a good decision and what is going to be a bad decision, based not on the public face of politics in that brief minute or two of question time that might be on television each night, but, rather, on what is really needed by the community of Western Australia.

In my view, illicit drugs are a very important issue. I constantly get people in my community complaining about the use of illicit drugs. It will be very good for the Community Development and Justice Standing Committee to have the opportunity to examine the Misuse of Drugs Amendment Bill 2011 to see whether the provisions written into this bill actually meet the genuine demands of the community. Some things that could happen are that the Community Development and Justice Standing Committee might be able to call in people and call in experts and ask whether the words in this bill are the best that we can do. The Acting Speaker will remember that earlier this year we dealt with the Commonwealth Heads of Government Meeting (Special Powers) Bill in this chamber—another bill that was brought to this chamber by the Minister for Police. I am sure we remember the

embarrassment when the Minister for Police, on the return of the bill from the upper house, had to introduce about a dozen amendments to the bill. Not only that, Mr Acting Speaker; you will remember that the Minister for Police specifically said that I, the member for Cannington, was wrong in the assessment of the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011 when we first considered it in detail, yet many of the amendments that were returned to this chamber from the other chamber were based on the issues that I had raised in consideration in detail. We can see that the Minister for Police has demonstrated the exact reason why we consider that this bill he is proposing should go to a committee to be properly and fully examined.

One of the things that happens at a committee is that the research staff are able to do literature research and find out what provisions apply in other places. We can look at similar provisions in other states or other common law jurisdictions in other parts of the world. That is a very important part of the process with which we are dealing. We are dealing with a Westminster system. The Westminster system is very important. Sometimes, when I listen to the Minister for Police, I am not entirely sure that he grasps the Westminster system. It is an important issue; in the Westminster system there is a separation between the executive and the Parliament and the Parliament is deemed to be supreme. In fact, the mace that sits on the table of the house and is brought in before the Speaker or the Acting Speaker in the morning or after a break in proceedings, such as a dinner or lunch break, is the symbol of our power. The mace is the symbol of our authority to make laws for the state of Western Australia. In the other chamber is the Black Rod, which is similarly a symbol of the authority of Parliament. That symbol is very important because it shows that we are primary over the executive. The executive is the ministers. It is very interesting that many backbench parliamentarians who are members of the governing party often in this chamber say that they are members of the government. As I know the Acting Speaker would be aware, they are not members of the government. They are no doubt members of the governing party, but they are not members of the government. Only the ministers and parliamentary secretaries are members of the government. The rest of us are, indeed, members of Parliament, and that gives us special responsibilities. Our special responsibility is not to toady to incompetent ministers such as the Minister for Police; our job is to examine the detail of every bill.

I am not sure whether you were here, Mr Acting Speaker, but I know that you have a particular interest in the bill that we dealt with immediately before the bill now before the house—the Cat Bill. I also moved that the Cat Bill should be referred to the Community Development and Justice Standing Committee. I did that because, as with this bill, I believed that that bill would benefit from having a non-partisan review. I moved that that bill go through that procedure. Just as an analogy so that I can explain what I am doing here tonight, I did that because, in my view, the Cat Bill has many, many deficiencies. Many of those deficiencies—in fact, 11—were taken up by the Minister for Local Government in his handling of the bill. That is a very good example of the Westminster system at work, because an opposition member, not a government backbencher, said to the minister that these are things that should be looked at in the Cat Bill.

It is to the credit of the Minister for Local Government that he listened to those suggestions from me, the member for Forrestfield, the member for Warnbro and other members, and amended the bill. The minister was not prepared to deal with two provisions during that procedure; one of those was the contradiction between clauses 9 and 10. I refer to this issue again as an illustration of the process and the benefit that can come from referring a bill to a committee. If this bill in front of us today, the Misuse of Drugs Amendment Bill 2011, is examined by the committee, it may well be able to find contradictions such as the one we found in the Cat Bill. It is again to the credit of the Minister for Local Government that he has acknowledged in *Hansard* that he will examine the conflict between clauses 9 and 10 of the Cat Bill between the bill leaving this chamber and arriving in the other chamber. I make the point whilst I am addressing the motion that I have moved that these are issues that I would have raised in the third reading debate had the Leader of the House allowed me to participate in the third reading debate on the Cat Bill.

Mr P. Papalia: And the minister might have responded in his third reading contribution.

Mr W.J. JOHNSTON: Indeed, member for Warnbro. That could have been another demonstration of the effectiveness of the Westminster system of Parliament, rather than, as illustrated by the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011, an incompetent minister not reading the bill before it came to the chamber. Again, I must compliment the Minister for Local Government; I know that he read the bill before it came to the chamber, because I had detailed conversations with him outside the chamber and across the chamber and I had an email exchange with him. Unfortunately, we saw the Minister for Police bring in the CHOGM bill, which he had never opened the cover of before he arrived. That is another reason why we would like to have this bill referred to the committee; we do not know whether the minister has read the bill before he brings it in. We would not want to have legislation passed in this chamber that has to be then extensively modified in the other place, as happened with the CHOGM bill and other bills that the minister has brought to the chamber. These are very important issues.

I will finish my analogy with the Cat Bill to explain why I am suggesting that Parliament refer this bill to a committee. We were not able to get agreement on one provision in the Cat Bill; that was the original clause 51(c). Again, if I had been permitted to speak at the third reading stage, I might have said these words in that third reading contribution. Interestingly enough, I have been speaking now—Mr Acting Speaker, I know that you are interested in this issue—for 13 minutes, which is longer than I would have spoken had I been allowed to participate in the third reading debate. In terms of the Leader of the House's management of the house, he should carefully consider that issue next time he moves a gag resolution immediately before he brings his own bill into the chamber. There might be some suggestions to him about the way he should not interfere with the good conduct in this place between the Minister for Local Government and the opposition when we are effectively dealing with legislation in the way that I have described.

The only thing we did not agree on was clause 51(c) of the unamended bill. To the Minister for Local Government's credit, even though he did not agree with us, which I think he should have, he made an undertaking that he would bring the legislation back to the chamber—if the bill is passed in the other house and enacted—if there is evidence of the things that we are saying will happen. That is to his credit. As I said, I am explaining to you, Mr Acting Speaker, and, through you, to everybody in Western Australia, the procedures of the Westminster system. I am making the point that that is an effective way of managing the government's business. Instead of being unnecessarily confrontational and stupid in this chamber, as with the CHOGM bill, the Leader of the House should listen and be attentive. Just because someone is not on the same side of the chamber does not mean that they are stupid. Of course, we have the exception with the Minister for Police because we know that he is stupid. Let us leave that issue to the side for one minute.

I want to continue and talk about what happens when the bill gets to the committee. The committee will be able to invite interested parties in the community to come and discuss the provisions—not the policy issues, because we have already dealt with the second reading, but the actual details. For example, how will hookahs and smoking implements be dealt with under clause 6 of the Misuse of Drugs Amendment Bill? What arrangements are there? Are the provisions of the bill adequate and suitable to deal with those issues or are there other matters that can be dealt with? Have other issues in the bill been misunderstood? Were the instructions from cabinet to the parliamentary draftsman effective? When we examined the CHOGM bill, it was clear that the cabinet instructions to parliamentary counsel were not adequate. During debate, that inadequacy was represented by the minister as a criticism by the opposition of the parliamentary draftsman. That of course is not correct. To make it clear to the community I know will be listening intently to the chamber proceedings tonight, it was a criticism of the performance of the member for Hillarys in his function as a cabinet minister. I am always amazed at the number of places I go to where people refer to the fact that they watch Parliament on the internet, which is a great innovation of the Western Australian Parliament and is to be commended.

That reminds me of the time I visited America in 2006 as a guest of the State Department of the United States; I went to Minnesota. As you may know, Mr Speaker, America has four levels of government, not three, because it has a county level of government responsible for health and education, the courts and the sheriff service. In Minnesota the county commissioners, the elected representatives of county government, are permitted to meet only at a formal hearing of the county commission or a subcommittee, such as the committee we are referring this bill to. I raised these issues in my inaugural speech. They are important issues of democracy. Interestingly, in Minnesota, the meetings of the full county commission or a subcommittee of the commission are broadcast live on cable television. Every citizen can see the entire decision-making process of the county commission.

[Quorum formed.]

Mr W.J. JOHNSTON: Before I was so rudely interrupted by the member for Bassendean, I was saying that those proceedings are broadcast live on cable TV. I know that in Australia we now have A-PAC, which is a copy of C-SPAN, and people can in fact watch all of question time in Western Australia in one hit; I think it is on a Saturday. Indeed, West TV, community channel 44, of which the member for Perth is a director in Western Australia, broadcasts half an hour—not the full 50 minutes—of question time at 9.30 pm on every day that we have question time.

The SPEAKER: Member for Cannington, while I appreciate the advice and am now well informed and might decide to watch, I will draw you back to the motion that you have proposed to the house.

Mr W.J. JOHNSTON: Thank you very much, Mr Speaker. Please make sure that I do not rove off to pastures unnecessary. I have only 41 minutes left!

It disappoints me that I need to do this, and I would not have felt the need to had I been given the opportunity to make a complete contribution to the Westminster debate in this chamber.

Mr F.A. Alban: Two wrongs make a right then, member.

Mr W.J. JOHNSTON: I have only one thing to say to the member. All I would like to say to the member for Swan Hills is, to quote the Premier from 16 June 2011, "shut up".

Several members interjected.

Mr W.J. JOHNSTON: If I could seek your assistance, Mr Speaker.

The SPEAKER: You have my assistance—thank you, members!

Mr W.J. JOHNSTON: Thank you very much. I will continue after having been so rudely interrupted—once by a call for a quorum and once by some inane interjection from the other side.

As I said in my inaugural speech, one of the great things about the committee process is that we can examine legislation away from the political dynamic and have an opportunity to look at the details. I understand that there may well be some opposition amendments to this bill. My point is that that is the perfect opportunity for a committee to have a bit of a think about the legislation. I used the example of the Cat Bill to demonstrate that it is good for the minister to listen to the opposition, instead of being headstrong and ignorant. When the minister listens to the opposition, rather than gagging debate and using the unreasonable force of the majority to silence the minority, the outcome is a better bill. The great thing about committees is that, although sometimes there are minority reports—indeed I was the author of a minority report from the Economics and Industry Standing Committee—generally speaking committee reports are unanimous.

Mr M.P. Whitely: That is my experience, with the odd exception.

Mr W.J. JOHNSTON: Yes. Indeed, the member for Bassendean has been here much longer than I have and has much greater experience with the sorts of issues that I raise in regard to this motion.

Mr M.P. Whitely: Yes; I could talk for three hours!

Mr W.J. JOHNSTON: Indeed. The committee would be able to examine the government's bill and the opposition's amendments. Using the Economics and Industry Standing Committee report on the Franchising Bill as an example, we were very fortunate to have a number of eminent lawyers, including a QC, an SC and a number of other eminent commercial lawyers, provide us with very, very thoughtful and helpful advice. One of the questions that always rings in my ear when I consider legislation from government is the challenge that government has to get proper legal advice. One of the problems is that in those types of professions often the best and brightest go into commercial operations. Whilst I am not denigrating the legal advice that comes to government, there is always an opportunity to seek advice from other sources when a bill is referred to committee, which is not available to government. It is also not directly available to the Parliament because one of the shortcomings of the parliamentary budget is that we do not have legal staff on tap. I am not denigrating the fact that we have learned advisers in the Clerks, many of whom have legal qualifications, but it is not the same as, say, having an SC on tap. The opposition is very lucky because we have many eminent lawyers on our side of the chamber, not the least being Dr Buti, the member for Armadale, who came to this chamber from Murdoch University and the University of Western Australia. He is an eminent jurist, with all due respect to the member for Girrawheen, who was the National Crime Authority's lawyer before being elected to Parliament in 2001, and the member for Mindarie, who was a lawyer for the police union, interestingly enough, before entering Parliament at the same election in 2001. The manager of opposition business was a JAG, if you like, a judge advocate general. I love that term. If he was in America, he would be a JAG.

Mr P. Papalia: The member for Victoria Park.

Mr W.J. JOHNSTON: I was getting to the member for Victoria Park; I am going to make a special comment about him.

The member for Rockingham was a naval lawyer before he came here. I do not know whether every member knows that the member for Rockingham won a military bravery award. He rescued a person from a burning car. He was still in the navy at the time, although I understand he was in transition. Because he was still in uniform, he could not receive a civilian award so he received a military award.

I will continue to address the motion, Mr Speaker. I am trying to explain to the community why it is so important that this motion be carried. We have an opportunity to get this bill away from the cut and thrust and the day-to-day party political fight that we see in question time every day to the more considered and intellectual opportunity provided by a committee chaired by the member for Joondalup. There are very few people in this chamber who could provide a better intellectual framework than the member for Joondalup.

Mr D.A. Templeman: A very experienced chairman.

Mr W.J. JOHNSTON: He is a very experienced chairman. He is another member who was elected to this chamber in 2001, and a small business man as well.

The member for Victoria Park has a very strong background as a lawyer in commercial matters. I understand that he worked for Minter Ellison for some time. He also worked for the Director of Public Prosecutions. He had a special role there. His role was to seize properties of drug dealers. He has a special background in considering the Misuse of Drugs Amendment Bill 2011.

Mr M.P. Whitely: Perhaps he could be co-opted onto the committee.

Mr W.J. JOHNSTON: That is an excellent idea. Perhaps the member would like to move an amendment to the motion to co-opt the member for Victoria Park because of his background. He has such a strong background that it would be very worthwhile to have him co-opted onto the committee to examine this bill.

When we read the minister's second reading speech, we see that the bill is aimed at illicit drugs, not licit drugs. This is a very important issue. As I commented previously in the debate on clause 1, the question of the separation between illicit drugs and licit drugs is significant. I was not present for the whole of the member for Bassendean's speech on the second reading but there were parts that I benefitted from hearing. He made a telling point about the need to differentiate between licit drugs and illicit drugs. I know that the member for Bassendean has demonstrated a long and deep commitment to fighting drug abuse in our community. I have read the minister's second reading speech in which he raises the same type of issue as the member for Bassendean has so eloquently raised. As the minister said in his second reading speech, he is about cracking down on drug dealers who sell or supply illicit drugs to children. Some drugs that are licit in certain circumstances are illicit in other circumstances.

The SPEAKER: Member for Cannington, I have provided you with a very generous opportunity to describe why you believe this motion should be successful in this place. I am going to ask you to come back to the substance of the motion and move away from the generalities, which certainly are appreciated. You would best serve your purpose of trying to make this motion a successful one for yourself by being very specific about why this motion should be passed in this place.

Mr W.J. JOHNSTON: I appreciate your guidance on that issue, Mr Speaker, which is why I was starting to refer to the minister's second reading speech. By doing that, with your assistance, I hope I can stay very true to your instructions and adhere to this necessary task. I was trying, and hopefully with your assistance will continue, to make it clear that the committee could examine the connection between the minister's words in his second reading speech—we have agreed with the intentions of the bill—and the actual words that are used in the bill and see how closely they match. I draw members' attention to the words in clause 6, which intends to insert after section 7A a new section 7B headed "Drug paraphernalia, offences as to". Proposed subsection (1) states —

> In this section —
>
> …
>
> ***drug paraphernalia*** means —
>
> (a) any thing made or modified to be used in connection with manufacturing or preparing a prohibited drug or a prohibited plant —
>
> (i) for administration to a person; or
>
> (ii) for smoking, inhaling or ingesting by a person; or
>
> (iii) to be burned or heated so its smoke or fumes can be smoked or inhaled by a person;
>
> or

I would be interested to know how the bill will deal with a situation in which an item could be used for a licit purpose but also for an illicit purpose. A committee would be ideally placed because it could call in a learned counsel to give an opinion about whether those words in the bill match up with the intention set out by the minister in his second reading speech. In the same clause, proposed section 7B(1) goes on to state —

> (b) any thing made or modified to be used by a person —
>
> (i) to administer a prohibited drug or a prohibited plant to a person; or
>
> (ii) to smoke, inhale or ingest a prohibited drug or a prohibited plant; or
>
> (iii) to smoke or inhale the smoke or fumes resulting from burning or heating a prohibited drug or a prohibited plant.

The reason I draw members' attention to that clause is because when we recently dealt with the issues surrounding the cannabis law there was extensive discussion about hookahs. I do not mean the issues that will be dealt with under prostitution law reform but, rather, smoking implements. My community of Cannington in the suburb of Queens Park is home to the Suleymaniye Mosque. That is the Turkish mosque in Perth. As I am sure

you are aware, Mr Speaker, if there is a Turkish mosque in an area, lots of Turkish people will live nearby. Indeed, if there is a Catholic Church in an area, Catholics will live nearby. Similarly, if there is a Uniting Church in an area, Uniting Church members will reside close by. I would be interested to get advice from people in my community, and a committee would allow us to do that. Rather than relying on members of Parliament to relay their views, people could come before the committee and give their own views personally to the committee. That is so much better than the truncated process that we have here, particularly when that process is truncated unfairly by the movement of gag motions.

[Quorum formed.]

Mr W.J. JOHNSTON: Before I was so rudely interrupted again by the member for Bassendean, I was making the point that my community has a large Turkish population. Indeed, if this bill were sent to a committee, rather than me having to stand in this place and explain the position of the Turkish community, the Turkish community could explain its views. That is why sending the bill to a committee would be so much superior to the political process in the chamber. That is the beauty of the committee process. Would the words in proposed subsection (1)(b) of proposed section 7B, "Drug paraphernalia, offences as to", on page 4 of the bill have any effect on cultural practices of the Turkish community? Only a committee would be able to determine that. We cannot do that in this chamber. Sending this bill to a committee would also ensure that we do not have the ping-pong process that we have seen with other bills when they go to the upper house. Indeed, we have seen a bill buried in the upper house. I am sorry; I cannot hear the minister.

Mr T.R. Buswell: He's not talking to you.

Mr W.J. JOHNSTON: Sorry. Mr Speaker, if I could have some assistance to ensure that the chamber is kept in order, I would appreciate that.

The SPEAKER: Member for Cannington, I do understand what you are saying. For members who may not have been in the chamber earlier, there definitely are some problems with the sound system in here. I do not know whether it is reflected in every seat in this place, but there certainly are some problems with hearing members in this place this evening, and we are attempting to rectify that. I will give you back the call, member for Cannington. But I instruct members that if they want to listen, they will need to do so in relative silence; otherwise, they will not be able to hear.

Mr W.J. JOHNSTON: Thank you very much, Mr Speaker, because that was the issue. The acoustics in this place are quite interesting sometimes; in fact, because of the curved wall, I can hear the Minister for Police if he puts his head up, but if he puts his head down, I cannot hear him. The problem then is that he was looking up. I digress; that is not about the motion. I do not want to get into trouble, so I will get back to the motion.

A committee is unique, because it can cut through all those issues. It can prevent a bill leaving this chamber and going to the other house. In fact, this morning the Leader of the House made the point that in previous Parliaments, bills shot through this house and then got stuck in the other house. I could go through a number of bills of the former Labor government that got stuck in the other house, and often they got stuck in committees with a majority of government members because the drafting of the bills was inadequate. It is not just this government that sometimes has trouble, although it is perhaps more often this minister; other governments sometimes have had trouble. If a committee properly examined the words of a bill, we could stop that ping-pong effect of amending bills in the other place and then having them returned to this place. Only a committee can do that. Indeed, we might be able to get a former member of this place who earned his living running a business called Joynt Venture to come in. I think he sat in this chamber as the member for Murdoch and was a Liberal minister in the Richard Court government.

Mr J.C. Kobelke: Mike Board.

Mr W.J. JOHNSTON: Yes, Mike Board, the former member for Murdoch. He made his living selling drug paraphernalia before entering Parliament. A committee could invite Mr Board to explain how this bill will affect the type of business that he operated before he became a Liberal member of Parliament. Indeed, the member for Southern River could encourage the members of his congregation to explain the good parts and the bad parts of the legislation. I know the member for Southern River is an active person in his community. He has often brought issues to the chamber by way of a member's statement or a grievance on behalf of his community. This would be another opportunity for the member for Southern River. He could get members of his congregation and people who associate with him and his church to make contributions to a committee. I understand that the member has a very active interest in the issue of illicit drugs. Is that correct, member for Southern River?

Mr P. Abetz interjected.

Mr W.J. JOHNSTON: Thank you. I understand from listening to his comments on reports of the committee he is involved with, which is chaired by the member for Alfred Cove, that he has a particular interest in this issue.

He would be able to encourage people who have made submissions to that committee to make submissions to the committee that would examine this piece of legislation.

We could go on and see whether the provisions of proposed section 7B are adequate and whether they will properly meet the tests that the Parliament agreed to when it agreed to the second reading of the bill. We could also call in the police and ask them whether they will enforce the provisions of this bill. One of the questions that always comes to my mind when we pass legislation is what enforcement will be done. I give the example —

Mr J.R. Quigley: Of the feral cats.

Mr W.J. JOHNSTON: No; I was going to say prostitution in this state. I have twice written to the Minister for Police regarding the brothel called Secrets Therapeutic Massage Studio on Albany Highway in Cannington, which is located immediately opposite a shopping centre. I do not believe that is an adequate place for a brothel.

Mr J.R. Quigley: The minister said in this chamber in 2004 that if he became Minister for Police, he would write to the commissioner directing him to enforce the prostitution laws.

Mr W.J. JOHNSTON: Is that the case? I wrote to the minister and drew that to his attention. I am concerned—this is why I think the bill would benefit from being sent to a committee—that the police would be reluctant to enforce the provisions of the bill. I would like the police to come to the committee and let us know. The police will be here during the consideration in detail stage to give advice to the minister, but, as you know, Mr Speaker, the advisers cannot address the chamber; only the minister can address the chamber. The minister will take advice. I appreciate that sometimes he might even understand that advice! Would it not be better to have the police there, capable of providing their own words to the committee so that, rather than having a second-hand process for understanding the needs of the police force and whether they are actually going to enforce the provisions of the act, we would know first-hand whether the police find these provisions enforceable and whether they will in fact act on them?

I make the point, to illustrate the reason I think this should go to the committee, that there is often misunderstanding about the way laws are constructed. For example, prostitution is not illegal but brothel-keeping is. In this bill, are we actually hitting the mark in making what we want to become illegal by the provisions in clause 7, or not? Will the police actually enforce those provisions? When we consider the question of the misuse of drugs, we have to think about the actions of the Court government in Western Australia prior to 2001, when it in fact introduced a system of cautioning, not through the parliamentary process but through police action. Regardless of the intention of the Parliament expressed through the written law of this state, police chose to interpret that in the way they did. If that question went to a committee, we would uniquely have the opportunity to understand whether that will be the case with the police in respect of the provisions of the bill. As I say, and as the Speaker knows himself, it is not possible for the police to tell us that in the chamber; it is only possible for the minister to take advice and give us his view of that advice.

The committee would be able to look at clauses 12 and 13 of the bill to see whether those provisions are suitable for the intentions described to us in our decision to support this bill at the second reading stage. That is what this motion that I have presented to the chamber will do, if it is supported by the chamber. I know the member for Girrawheen, in debate on clause 2, asked a question about whether in fact there should be a third date of operation of the bill to take account of regulations that are necessarily made after the bill is enacted. What the member for Girrawheen pointed out was that in her learned view—as a very well educated lawyer with extensive experience at the National Crime Authority; she in fact cracked down on drug dealers in Australia at the senior law enforcement agency in the country, which demonstrates the Labor Party's commitment to the fight against drugs in this state—there needs to be a gap to allow the regulations for certain provisions of the bill to come into force prior to the balance of the bill, which would become an act on assent. These are all very important issues that would need to be considered by the committee if the chamber is minded to refer the bill to that process.

One point I make about the motion I have moved this evening is that I do not have a specific reporting date. I think that the committee has a large workload at the moment. I understand it has two inquiries on foot, so it would be important to me to allow the committee to set its own reporting deadline, which is why I did not write in the motion a specific reporting date. Yesterday, when we were discussing the Cat Bill, I moved a similar motion—I think I spoke for four minutes—that had a reporting date of 1 December. But tonight I do not think it is appropriate to have a specific reporting date because of the large workload that is already in existence for that committee. I know, as a member of a committee myself, that time outside the chamber can be consumed by reports. The report that comes to mind when I say those words, in illustrating the reason that I do not have a reporting date in the motion, is in fact the first report that I was involved with as a member of Parliament on the Economics and Industry Standing Committee. That was chaired by the member for Riverton, an eminent economist, as I understand, and a doctor—not a medical doctor but a doctor of economics. That report was about caravanning. The committee did not believe that that inquiry would take very long—it took nearly a year.

Members can see that sometimes when matters are referred to a committee, the committee finds things are much more complex than appears to us standing so easily in the chamber at this hour of the night, as we give proper and due consideration , as is our need, to the important matters that the Minister for Police has brought to us this evening.

These are the issues that I contemplated when I wrote my motion to consider this matter tonight. Members can see that I did not do this in any trivial way. These are all very serious matters. Sometimes, when considering the motion that I have moved, members will say it is filibustering and that we are wasting the time of the chamber. The point I have been making over the last 49 minutes is that the proper management of this house would always ensure that time is not wasted, and that there is a proper process that we are so directed towards by the noble traditions of the Westminster Parliament, our rights and authorities of which are symbolised by the mace sitting upon the table in front of Mr Speaker. These are not trivial matters that the government should make light of, particularly a minority government—a minority government that does not know whether it is going to keep its majority every day and a minority government that should have proper respect for the great traditions of Parliament and not think that somehow or other, as I have heard the Premier say, it is his Parliament. It is not the Premier's Parliament. That is why it is so important that we emphasise, by passing the motion in front of us tonight, and say that we are the Parliament, we are supreme, we are in charge—not the government. We do those things. It is our power that is enforced by the servants of the state—for example, the police.

One of the issues that could be considered by the Community Development and Justice Standing Committee, under the excellent chairmanship of the member for Joondalup—who was elected to this place so long ago—is the question of police brutality. We have heard in this chamber that the Corruption and Crime Commission is not in fact reviewing police brutality. I have heard stories, not in Western Australia but in other states; I have no knowledge that this would apply in Western Australia, and I make no suggestion that it does. However, I have heard an example from a person who, in western Queensland, had some marijuana in their panel van and was arrested at two o'clock in the morning when they and their friend were sleeping in the panel van. They were taken to the police station. At five o'clock in the morning they were released without charge, and of course the bag of marijuana disappeared. We know from the Fitzgerald inquiry in Queensland that that was a serious problem in Queensland. There has been a royal commission in Western Australia that in fact found there was no evidence of that.

The SPEAKER: Member for Cannington, I hope this is relevant to the motion you have in front of this place. While I am talking to you, member for Cannington, I might instruct that although no reporting date was placed in this motion, when you do such a thing without a reporting date, under standing order 255 it automatically becomes 12 calendar months. That is not only for your instruction but also for other members in this place. I am just providing the member for Cannington with information about what would happen if the motion was to be successful. I am also hoping you might come back to the substance of the motion.

Mr W.J. JOHNSTON: I am terribly sorry, Mr Speaker, if you thought I was not on topic. I thought I was, because I was explaining that one of the things that could be looked at is whether any of these words have any implications for the matters that have been raised with this chamber by the Parliamentary Inspector of the Corruption and Crime Commission. That would be an issue that the committee could review if it wanted to. These are all important issues that a committee is uniquely placed to consider. As I say, I did not arrive at Parliament this morning with the intention of moving such an important and grave resolution. It was in fact the management of the house that urged me to do such a thing.

I think that the Parliament can rise to great occasions. That was clearly demonstrated in the passage of the Cat Bill, in which the government and the opposition worked together—not in total unanimity—to ensure that the legislation was improved. It was disappointing that the Parliament did not rise as high as it should, when the debate on that bill was cut short by 10 minutes. Fifty-three minutes into my comments on this important resolution, I think that everybody in the chamber should learn the lessons that I have been able to bring to the chamber through the movement of this resolution. This resolution gives us the opportunity to go beyond the day-to-day knife of politics, to make sure that everything that can be said and considered on this bill is said and considered, that we ensure that the bill is adequate.

Mr Speaker, I draw your attention to the state of the house.

The SPEAKER: I am going to have to seek some advice, member for Cannington. There is not a quorum present. However, I am going to provide some further information to the house in a moment.

[Quorum formed.]

Mr W.J. JOHNSTON: In conclusion, these are important issues for us to deal with. I have not moved a trivial resolution; I have moved a resolution that is important for us to consider. If the minister is not minded to have

the matter dealt with by a committee, then that would be disappointing. As I say, if members examine my inaugural speech, these are all matters that I canvassed then. There is a direct line, without interruption, between my inaugural speech and the resolution that I have moved tonight. Whilst I know that many members in this chamber do not take their duties seriously, I do.

Mr J.M. Francis interjected.

Mr W.J. JOHNSTON: I have something for the member for Jandakot. I will quote the Premier from 16 June 2011.

Several members interjected.

Mr W.J. JOHNSTON: Shut up!

The SPEAKER: I formally call the Minister for Heritage to order for the first time today. Member for Cannington, while I have indulged you, if I hear that comment again, I will provide you with some other advice. You know the comment I am talking about. I will give you back the call.

Mr W.J. JOHNSTON: I will not delay the house unnecessarily tonight; I do not want to do that. These have been serious and important issues. If the Minister for Police was able to manage the house in a better way, I imagine that I would not have had to do these things, but I did feel compelled because of the way that the manager of government business has handled the house today.

Question to be Put

MR R.F. JOHNSON (Hillarys — Leader of the House) [9.46 pm]: I move —

That the question be now put.

Question put and a division taken with the following result —

Ayes (21)

Mr P. Abetz	Mr G.M. Castrilli	Mr R.F. Johnson	Mr D.T. Redman
Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.M. Francis	Mr J.E. McGrath	Mr A.J. Simpson *(Teller)*
Mr J.J.M. Bowler	Mr B.J. Grylls	Mr W.R. Marmion	
Mr I.M. Britza	Mr A.P. Jacob	Mr P.T. Miles	
Mr T.R. Buswell	Dr G.G. Jacobs	Ms A.R. Mitchell	

Noes (16)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr C.J. Tallentire
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.C. Kobelke	Mr P. Papalia	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*

Pairs

Mrs L.M. Harvey	Mr P.C. Tinley
Dr E. Constable	Mr R.H. Cook
Dr M.D. Nahan	Mr A.P. O'Gorman
Mr C.J. Barnett	Ms R. Saffioti
Mr C.C. Porter	Mrs C.A. Martin
Mr T.K. Waldron	Mr A.J. Waddell
Dr K.D. Hames	Mr E.S. Ripper
Mr M.J. Cowper	Mr B.S. Wyatt

Question thus passed.

Referral to Community Development and Justice Standing Committee — Motion Resumed

The SPEAKER: Members, I will read the motion to you because some of you might not have been in the chamber, and I observe that the sound system seems to be working again. The question is that the Misuse of Drugs Amendment Bill 2011 be referred to the Community Development and Justice Standing Committee for examination and report.

Question put and a division taken with the following result —

Ayes (16)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr C.J. Tallentire
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.C. Kobelke	Mr P. Papalia	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*

Noes (21)

Mr P. Abetz	Mr G.M. Castrilli	Mr R.F. Johnson	Mr D.T. Redman
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Mr J.J.M. Bowler	Mr B.J. Grylls	Mr W.R. Marmion	
Mr I.M. Britza	Mr A.P. Jacob	Mr P.T. Miles	
Mr T.R. Buswell	Dr G.G. Jacobs	Ms A.R. Mitchell	

Pairs

Mr P.C. Tinley	Mrs L.M. Harvey
Mr R.H. Cook	Dr E. Constable
Mr A.P. O'Gorman	Dr M.D. Nahan
Ms R. Saffioti	Mr C.J. Barnett
Mrs C.A. Martin	Mr C.C. Porter
Mr A.J. Waddell	Mr T.K. Waldron
Mr E.S. Ripper	Dr K.D. Hames
Mr B.S. Wyatt	Mr M.J. Cowper

Question thus negatived.

Consideration in Detail Resumed

Clause 3: Act amended —

Debate was interrupted after the clause had been partly considered.

Clause put and passed.

Clause 4: Section 3 amended —

Mr J.C. KOBELKE: As the minister well knows, clause 4 introduces into section 3 the definition of "adult" to mean a person who has reached 18 years of age. Section 3, the definitions section of the Misuse of Drugs Act, commences —

> In this Act, unless the contrary intention appears —

Following that, further down in that list of terms used in the act will be inserted the word "adult". The explanatory memorandum explains that this is required because of the amendments to the act in clause 9. These go to the particular penalties whereby an adult is to be the only person to whom these penalties can apply, and they are quite severe penalties. Therefore, clause 9 says that when there is the offer to sell or supply a prohibited drug or a prohibited plant to a child, "the person was an adult when the offence was committed" and so on. Because that word "adult" appears on three occasions, I think, in clause 9, the government is instituting this definition. To me, that is all straightforward. However, the matter that I would like the minister to try to explain is what potential there is for confusion, because now we end up with two different definitions of the word "adult"; and that is to apply across the act, as section 3 says, unless the contrary intention appears. However, part IIIA of the Misuse of Drugs Act 1981, "Cannabis intervention", states —

> In this Part —
>
> ***adult*** means a person who is not a young person;

The definition of "young person" is also in the list of definitions in section 8B of the act, under part IIIA, "Cannabis intervention". It states —

> ***young person*** means a person who —
>
> (a) is under 18 years of age; or
>
> (b) in relation to the commission, or alleged commission, of a minor cannabis related offence, was under 18 years of age when the offence was committed, or allegedly committed.

Therefore, we can have a 19-year-old who, under part IIIA, is considered to be a young person and therefore not an adult. So in one part of the act a 19-year-old is not an adult, but, with the amendment that the minister has put in the bill, for the rest of the act, a 19-year-old is an adult. I am sure the lawyers will not have any confusion about that, but, for an ordinary person, a person who might be charged, it is certainly very confusing. A 19-year-

old is an adult for some purposes of the act and a 19-year-old is not an adult in certain circumstances for one particular part of the act. The issue I would like the minister to try to explain is why this peculiar approach of having two different meanings for adult is necessary in the drafting of the bill, and why we could not have had alternative drafting to avoid what to ordinary citizens would be a rather confusing arrangement that "adult" has different meanings depending on the circumstances and depending on which part of the Misuse of Drugs Act, when these amendments come into place, is being applied. I ask the minister to try to explain to us why it was absolutely necessary to leave this potential confusion for ordinary citizens in the legislation. As I said, I am sure lawyers will have no trouble applying different definitions in different parts of the act, but it seems to be an unnecessary confusion for most of the community. Why could the problem not have been got around with a better drafting form than that used in this amendment?

Mr R.F. JOHNSON: The member for Balcatta keeps referring to 19-year-olds; no part of the legislation refers to a 19-year-old. A 19-year-old is an adult; an 18-year-old is an adult. But if the member is referring to someone who may have committed an offence perhaps the day before they became 18, the offences are committed as a juvenile, a young person, whereas the infringement might be given after the person becomes 18. That is the way that I understand it in part IIIA of the act. I am sure that the member is aware of that, and I am sure that the member knows the act backwards. I am sure that he is aware that the same people who draft the legislation for me are the same people who drafted all the legislation that the member brought into the house when he was in government. I am sure the member is not criticising the draftspeople who have prepared this legislation.

Mr J.C. KOBELKE: The minister's explanation does not satisfy me and I ask whether he would like to refer to the act that he is amending; that is, section 8B under part IIIA, "Cannabis intervention", which states —

> ***adult*** means a person who is not a young person;

It does not state an adult is someone who is 18 years of age or older; it states an adult is a person who is not a young person.

Mr R.F. Johnson: It also states further on —

> ***young person*** means a person who —
>
> (a) is under 18 years of age

Mr J.C. KOBELKE: But the minister cannot be selective and only read half the truth. I know that that is his normal approach to things, but he cannot do that. Keep reading. What does definition (b) of what the minister has just read state?

Mr R.F. Johnson: At the time of the offence—that is what I mentioned to you earlier.

Mr J.C. KOBELKE: The act states —

> … or;
>
> (b) in relation to the commission, or alleged commission, of a minor cannabis related offence, was under 18 years of age when the offence was committed, or allegedly committed.

The point here, though, is that the person would be defined as not being an adult even though they are over 18 years of age.

Mr R.F. Johnson: Yes, if the offence was committed when they were under 18, they would be a young person.

Mr J.C. KOBELKE: Yes, but for the purposes of the act, they are therefore caught by a definition that says that they are not an adult.

Mr R.F. Johnson: Of that section, yes.

Mr J.C. KOBELKE: Whereas, the amendment now before the house states that they would be an adult.

Mr R.F. Johnson: Under the provisions of the act, yes, exactly.

Mr J.C. KOBELKE: The issue I am putting to the minister is that I am sure his legal advisers and lawyers will not have any problems because they will know that depending on which part of the act they are dealing with, there is a different definition. I am not saying that there is confusion in terms of the law and how it would be applied. I am saying that for ordinary people who do not understand legal terms, having a definition "adult" mean two different things can be confusing.

Mr R.F. Johnson: You may think so, but I don't.

Mr J.C. KOBELKE: But not for the minister.

Mr R.F. Johnson: No.

Mr J.C. KOBELKE: No; obviously these facts are not something that the minister will worry himself about, because he had difficulty grasping them when he tried to respond to me and selectively used only parts of the definition. I will not delay the house, but I just think that there could be better drafting so that what is clear to lawyers will also hopefully be something easier for the ordinary community members to understand, and we do not have "adult" in the act having two quite different meanings. "Adult" is a normal word in common usage; people have a common understanding of it, but when the Misuse of Drugs Act 1981 is amended, it will contain two different definitions of "adult".

Ms M.M. QUIRK: Further to that point, can the minister explain why it is necessary to insert this definition set out in clause 4 given the existing definitions in section 8B, under part IIIA, of the act, "Cannabis intervention"?

Mr R.F. JOHNSON: It is done for two purposes, which I am sure the member for Girrawheen realises. One is of course —

Ms M.M. Quirk: I don't; otherwise, I wouldn't have asked the question, minister.

Mr R.F. JOHNSON: Does the member really not realise?

Ms M.M. Quirk: I really don't realise.

Mr R.F. JOHNSON: She really does not. Okay, let us try to help her here. The first reason it is done is because it is needed in relation to the amendments contained in clause 9 of the bill and the definition of "adult". The second reason was in relation to clause 6.

Ms M.M. Quirk: What is the effect of clause 9, minister? Explain that if you could.

Mr R.F. JOHNSON: It is the offences committed by adults against children.

Ms M.M. Quirk: And are children those under 16 years?

Mr R.F. JOHNSON: In some provisions, but not all.

Ms M.M. Quirk: Perhaps you could expand on that.

Mr R.F. JOHNSON: I think we will wait until we get to clause 9, and we will expand on it then.

Ms M.M. Quirk: No, minister, because —

Mr R.F. JOHNSON: Yes; we will.

Ms M.M. Quirk: — you said that that definition had to be put in in clause 4 for the purposes of the provisions of clause 9. We are dealing with clause 4 now; therefore, we ask you this question at this stage.

Mr R.F. JOHNSON: It is also needed in clause 6 of the bill.

Ms M.M. Quirk: All right; can you explain why it is inserted now, since we are dealing with clause 4. Can you give us the reasons?

Mr R.F. JOHNSON: I am sure the member for Girrawheen heard that information as it was being whispered to me by the adviser.

Ms M.M. Quirk: No; I didn't, and certainly Hansard wouldn't have.

Mr R.F. JOHNSON: As the definition refers to different parts of the act, it needs to be put upfront, as the member would be aware, and that is why it has been put in that particular clause, because it deals with the different parts of the act, in the terms of the act.

Ms M.M. Quirk: Minister, we are asking why it is that in one piece of legislation there effectively needs to be two definitions of "adult". What is the reason for that?

Mr R.F. JOHNSON: One part of the legislation deals with the sale of drug paraphernalia to adults and children, and we need to clarify the definition there. The second definition applies to offences committed by adults against children.

Ms M.M. Quirk: In relation to that second definition, minister, wouldn't "adult" take its normal meaning? In relation to the first definition—namely, the amendment in clause 4—it is not expressed to apply only to part of the act; it is just expressed as a general meaning. If clause 4 is limited to, for example, specific provisions or parts of legislation, I could see why it might be necessary, but given that there is no such restriction, I do not understand why the other definition does not suffice.

Mr R.F. JOHNSON: The current definition in section 8B is for when offences have been committed by children when they are children, but they are not charged or caught and dealt with until after they turn 18 years old.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Section 7B inserted —

Mr J.C. KOBELKE: Clause 6 refers to drug paraphernalia and offences relating to that. Proposed section 7B defines "display" and "drug paraphernalia" and then goes on to outline a range of penalties for people who are involved in owning, handling and being in possession of this drug paraphernalia. However, proposed section 7B(5) provides —

> (5) It is a defence to a charge of an offence under subsection (2), (3) or (4) to prove —
>
> (a) the accused was a person prescribed; or
>
> (b) the drug paraphernalia displayed or sold was a thing prescribed or of a class prescribed; or
>
> (c) the display or sale occurred in circumstances prescribed, for the purposes of that subsection.

I would like the minister to put on the record a very clear definition of what is meant by "prescribed" in this provision. The word is not defined. I think that I know the intent, but given that it is not defined, I think we should have clearly on the record the full intent of "prescribed" and how it might be applied when it is used in four different places in proposed section 7B(5).

Mr R.F. JOHNSON: The advice I am given is that "prescribed" is defined in the Interpretation Act and that would relate to regulations that would need to be issued. Regulations change from time to time, obviously. Does that answer the member's question?

Mr J.C. KOBELKE: "Prescribed" does not apply only to proposed section 7B(7), because proposed section 7B(5) provides —

> (5) It is a defence to a charge of an offence under subsection (2), (3) or (4) to prove —
>
> (a) the accused was a person prescribed; or
>
> (b) the drug paraphernalia displayed or sold was a thing prescribed or of a class prescribed; or
>
> (c) the display or sale occurred in circumstances prescribed ...

Proposed section 7B(7) also gives us defences —

> (7) It is a defence to a charge of an offence under subsection (6) to prove —
>
> (a) the accused was authorised by or under this Act or the *Poisons Act 1964* to possess the prohibited drug or prohibited plant; or
>
> (b) the accused had possession of the drug paraphernalia —
>
> (i) only for the purpose of delivering it to a person authorised under this Act or the *Poisons Act 1964* to have possession of any prohibited drug or prohibited plant in or on it; and
>
> (ii) in accordance with the authority in writing of the person so authorised,
>
> and that, after taking possession of the drug paraphernalia, the accused took all such steps as were reasonably open to the accused to deliver it into the possession of that person; or
>
> (c) the accused had possession of the drug paraphernalia only for the purpose of analysing material in or on it, examining it or otherwise dealing with it for the purposes of this Act in his or her capacity as an analyst, botanist or other expert.

Those would be outs for the possible offences, but the minister is saying that "prescribed" does not apply to that. The minister is saying that "prescribed" applies only to regulations.

Mr R.F. Johnson: Proposed section 7B(7) applies only to proposed section 7B(6).

Mr J.C. KOBELKE: And not to any of the other parts then.

Mr R.F. Johnson: No.

Mr J.C. KOBELKE: In terms of the regulation-making powers, what is the intent to prescribe? I know that the regulations are to be written, but the minister must have a clear intention of who is to be given this defence under proposed section 7B(5). Who are the people who are likely to be accused, but who will be prescribed so that they cannot be successfully prosecuted? The minister might like to explain what sort of person he is likely to prescribe; what is the drug paraphernalia that is likely to be prescribed as a class or individual; and what are the sorts of circumstances that potentially will be prescribed in regulation?

Mr R.F. JOHNSON: I think that I covered this area when I responded to the member for Girrawheen's question during the second reading stage. I will reiterate the question to the member, if he likes, because it elucidates what it is.

Ms M.M. Quirk: That might be a good idea because the microphones were not working at the time.

Mr R.F. JOHNSON: I will speak up and I hope that this will come across loud and clear. Currently, under the Misuse of Drugs Regulations, items such as hookahs and shishas are excluded from the definition of cannabis-smoking paraphernalia. Regulations will be made under proposed section 7B of the Misuse of Drugs Act to also exclude such items. In addition, regulations will be made so that needle and syringe programs that have been approved under the Poisons Act also will not be captured by the provisions of proposed section 7B. Clause 6 of the bill, which contains proposed section 7B, and clauses 5, 7, 8, 12, 13, 14, and 15, which are all consequential amendments, will not be proclaimed until those regulations are in place.

Mr J.R. Quigley: Just at the start, you said "tissues"? What did you say? Cookers and—

Mr R.F. JOHNSON: I said "hookahs and shishas". They are smoking implements, apparently, used by certain ethnic people in the community.

Mr J.R. Quigley: Hookahs and —

Mr R.F. JOHNSON: Not hookers, not prostitutes—the thing that —

Mr J.R. Quigley: The pipes with the long —

Mr R.F. JOHNSON: Correct.

Mr J.R. Quigley: The Turkish things.

Mr R.F. JOHNSON: Yes, that is correct. I have never used one, but I am told —

Mr J.R. Quigley: I have seen them in shops.

Mr R.F. JOHNSON: I am told that they are called "hookahs" and, apparently, the other one is "shishas".

Mr J.R. Quigley: I thought you said "tissues", you see.

Mr R.F. JOHNSON: No, I said "shishas".

Mr J.R. Quigley: What are they?

Mr R.F. JOHNSON: It is the same sort of thing, but it looks slightly different, I think.

Mr M. McGowan: "Hookahs" is spelt H-O-O-K-A-H-S.

Mr R.F. JOHNSON: H-O-O-K-A-H-S, yes.

Mr M. McGowan: How do you spell "shishas"?

Mr R.F. JOHNSON: I will tell the member: S-H-I-S-H-A-S.

Mr M. McGowan: How do you spell that backwards?

Mr R.F. JOHNSON: It is probably very similar. I would not have a clue; I have never used the blooming things. I hope that answers the member's question.

Mr J.C. KOBELKE: That answers my question in part. There is a Lebanese restaurant or coffeehouse on Wanneroo Road, on the edge of my electorate, and people sit out on the kerb and use those devices to smoke what I am told are legal substances. I may have some doubts because of some of the people who hang out there. That is a different matter and that has been reported to my local police.

The concern I have is about whether there will be a watertight and adequate definition that separates the hookahs and those types of devices from devices that would be used for cannabis or other illegal substances. Are there

definitional issues with what will be considered legal and what will be considered illegal? Or, is the definition to some extent about whether someone uses the paraphernalia to smoke cannabis or an illegal drug, and that is what makes it illegal? Can the definition of the actual device be clearly differentiated or is it really the purpose to which it is put that determines whether it is a prescribed device, which will be allowed, or whether it is an illegal device?

Mr R.F. JOHNSON: I remember it now; we accommodated concerns from members on the opposite side of the house about those specific smoking implements and we wanted to —

Mr J.R. Quigley: Culturally based.

Mr R.F. JOHNSON: Yes; that is why we needed to try to clearly identify them as being for smoking tobacco and not for smoking illegal substances. That is why we needed to define them in the particular way that we have in the bill.

Mr J.C. Kobelke: Minister, I accept the intent. All I am seeking clarification on is whether there is a simple and direct way of defining those implements so that they are prescribed, or are there definitional issues between a hookah and other smoking devices that would not be prescribed?

Mr R.F. JOHNSON: A shisha or hookah is already described in regulation 6(a), gazetted on 29 July 2001, as being excluded from being cannabis-smoking paraphernalia. That is, if the member likes, the starting point. If we need to make it more clear in some way, we will obviously do so.

Mr J.C. Kobelke: Is the minister assuring the house that, given existing and past practices, he has no concerns about definitional issues in the regulations in the prescribing of exempt articles under proposed subsection 5?

Mr R.F. JOHNSON: No; I do not think so. I feel fairly confident that our police can adequately write up a regulation for me to sign.

Mr J.C. Kobelke: For the actual paraphernalia that will be prescribed?

Mr R.F. JOHNSON: Yes.

Mr J.C. KOBELKE: Proposed section 7B(5)(a) refers to "the accused was a person prescribed". What are the classes of people likely to be prescribed? Will pharmacists fall into the category, because they hand out syringes legally? Who are some of the persons that will be prescribed exempt from the penalties, therefore enabling them to handle, control or sell what otherwise might be deemed drug paraphernalia?

Mr R.F. JOHNSON: The pharmacist taking part in a needle exchange program will be covered under subsection 5(a) and the program itself is covered under 5(c).

Mr J.C. Kobelke: Is it only pharmacists or are there other categories of people who might, on current thinking, be included in the regulations to be prescribed persons?

Ms M.M. Quirk: Nurse practitioners for example.

Mr R.F. JOHNSON: I am informed that the police are in discussion with the health department to see whether we need to include others. The member for Girrawheen interjected with nurse practitioners, who, I would suggest, certainly might come within that category. Obviously, we want to cover everybody who needs to be covered under regulation in relation to subsection 5(a) and (c).

Mr J.C. KOBELKE: I thank the minister. The last question I have is about prescribing the person, the paraphernalia, the class and the circumstances of display or sale of the paraphernalia. Although I am very satisfied with the explanations the minister has given, I understand that will be done through section 41 of the Misuse of Drugs Act. I would like the minister to confirm whether section 41, "Regulations" will prescribe these matters.

Mr R.F. Johnson: Yes.

Mr J.C. KOBELKE: Thank you. I refer to section 41, paragraphs (a), (b) and (ba), and (c) subparagraphs (i) and (ii), and paragraph (d). Which part of section 41, "Regulations", would be used to prescribe the matters in proposed section 7B(5) in clause 6 of the bill?

Mr R.F. Johnson: I am told it does not have to fit under paragraph (a) or (b) or even (ba); it is basically whatever is necessary or convenient to be prescribed for giving effect to the purposes of the act.

Mr J.C. KOBELKE: So it will be caught with the introduction, which is the catch-all, rather than any of the specific provisions?

Mr R.F. Johnson: Yes.

Mr J.C. KOBELKE: Again, the minister's legal advice is that that will not create a problem for the government with smart lawyers who might like to try to get people off and that the government's regulations will stand up. Section 41(1) of the principal act states "in particular", which is the general approach. But none of the particular areas in which regulations can be made, it would appear from my reading of it and from my understanding of the minister's reply to me, specifically refer to the matter now before the house in proposed section 7B(5). Therefore, the minister is relying on the general catch-all to "make regulations prescribing all matters that are required or permitted by this act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this act".

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: The minister has talked about shishas and hookahs and pharmacists who are participating in a needle exchange program in relation to proposed section 7B(5). If pharmacists are not participating in a needle exchange program—for example, the sale of Fitpacks at chemists is very common—what is the status of Fitpacks under proposed section 7B(5)?

Mr R.F. JOHNSON: I am told that Fitpacks are part of the needle exchange program.

Ms M.M. QUIRK: I have certainly seen Fitpacks literally on a shelf in a pharmacy that are not supplied to people by a pharmacist per se; people just pick up a pack, take it to the counter and pay for it. There are reasons for that level of anonymity. What I am asking is whether there needs to be the active participation of an authorised pharmacist. For example, would someone being able to get a Fitpack just off a shelf in a pharmacy be permitted?

Mr R.F. JOHNSON: I am told that Fitpacks can be used for diabetics, but I am very happy to read the advice that I have been given in relation to Fitpacks, Fitsticks, Sterifits and other similar products. These products are all provided to the community through approved needle and syringe programs. All such programs are approved through the health department under the Poisons Act. The pharmacy board has approval to operate a needle and syringe program and in doing so the actual pharmacists have a set of professional practice standards that they have to comply with, which include specific provisions in relation to needle and syringe programs. Version 3 of the professional practice standards specifically comments on juveniles and goes on to say more about it, but I think that probably answers the member's question.

Mr J.C. KOBELKE: Going back to the start of proposed section 7B(1)(a) where we define drug paraphernalia, I want the minister to clarify, so we have it on the record, whether hydroponic systems potentially get caught as drug paraphernalia because the proposed section states —

> any thing made or modified to be used in connection with manufacturing or preparing a prohibited drug or a prohibited plant …

Are hydroponic systems then caught as drug paraphernalia potentially?

Mr R.F. JOHNSON: If it is considered connected property in part of the offence, it would be covered.

Mr J.C. Kobelke: It would be if there were drugs found in association with it?

Mr R.F. JOHNSON: Yes.

Mr J.C. Kobelke: But not if it's in my front lawn and it's just grass—buffalo grass.

Mr R.F. JOHNSON: No, not if it is just grass; that would be perfectly okay. It is not an offence to possess drug paraphernalia on its own. If it contains traces of an illegal substance, such as cannabis, it becomes an offence.

Mr J.C. KOBELKE: I draw the minister's attention to proposed section 7B(6), which states —

> A person who is in possession of any drug paraphernalia in or on which there is a prohibited drug or a prohibited plant commits a simple offence.
>
> Penalty: a fine of $36 000 or imprisonment for 3 years or both.

That is quite a hefty penalty for what might be a very minor offence. Clearly, the police have to exercise discretion in many areas. We rely on them to do that in a way that exercises commonsense. I would like the minister to give some explanation to the house and hopefully an assurance that it is expected that that discretion would be used if someone was accidentally in possession of drug paraphernalia. For instance, I walk most mornings. I usually walk my dog. It is not unusual to find a drink bottle that has a hole burnt into it and a pipe in it—a bit of plastic tubing. That obviously would be called drug paraphernalia if there was some trace of cannabis or other drug on it.

Mr R.F. Johnson: That would come under discretionary powers that police have.

Mr J.C. KOBELKE: The point I am making is that someone may pick up that bottle. Obviously, I am not going to for a whole lot of health reasons, and it is rubbish. If I did pick it up, it would be only to drop it in the nearest bin. Someone might have picked it up and put it in their garage or thrown it into their backyard or something. If the police find that, they would have drug paraphernalia with fingerprints potentially on it. The police may infer the worst possible outcome for that person—that they are in possession of drug paraphernalia. It has their fingerprints on it. A chemical analysis is done.

Mr M.J. Cowper: It comes under a different section.

Mr J.C. KOBELKE: Another section may apply properly but let us look at proposed subsection (6). Does it potentially cover that situation and are we relying on the discretion of the police to say, "No, we're not going to apply subsection (6)(b). It's not appropriate"? There may be some other section that we want to look at. As I have indicated to the minister, it is not unusual when I am out walking—I do walk a fair distance—to come across an old drink bottle that has clearly been modified in a way that leads me to be very suspicious that it has been used as a smoking implement, and I assume for illegal drugs. If they are lying around the streets, as they are in many suburbs, and someone picks one up and is found to be in possession of it, are they likely to be hit with proposed subsection (6), charged and face a fine of $36 000 or imprisonment for three years or both? They would have difficulty defending themselves and there is no evidence they ever smoked or used it to ingest a drug but they were caught in possession of it. They might have been carrying it home to drop it in the bin. If a police car goes by, the policeman could see this person carrying this implement, which clearly identifies drug paraphernalia.

Mr R.F. JOHNSON: I am told that most people who are picked up under section 5(1)(d) now are in possession of the drug anyway. I am advised that in the scenario that the member puts up, it would normally be a question of —

Ms M.M. Quirk: Time, place and circumstance.

Mr R.F. JOHNSON: Exactly. It would come down to time, place and circumstance as to whether the police would be likely to have a successful conviction. They have to consider whether it is in the public interest to pursue a charge against that particular person. I would suggest that in the circumstances that the member has outlined, it is very unlikely that the police would waste their time because the chances of a successful prosecution would be very limited.

Mr J.C. Kobelke: What I interpret you as saying is that police discretion in most circumstances would mean that they will not be charging a person through proposed subsection (6). But it still comes down to police discretion and it would be open in particular circumstances that a person could be charged with possession of drug paraphernalia under proposed subsection (6) when they just had it in their possession.

Mr R.F. JOHNSON: Technically, they could, but, as I said earlier, I do not for one moment believe that the police would start a prosecution unless they thought they would have a successful outcome. The odds are that without some harder evidence, they would not get that outcome. Does that answer the member's query?

Mr J.C. Kobelke: As I said earlier, I think we are relying on police discretion. For 99 per cent of the time that works well but there are circumstances when the police get it wrong. Someone could face these very severe maximum penalties when they have simply picked up something off the street when they should have been smarter to not touch it if they suspected it was drug paraphernalia.

Mr R.F. JOHNSON: The current offence under section 5(1)(d) of the Misuse of Drugs Act is three years' imprisonment. The imprisonment penalty will not change but the monetary penalty will. It would be extremely extraordinary for police to pursue a prosecution in the circumstances that the member has described. I cannot guarantee that it would never happen but I believe that the chances of a successful prosecution would be absolutely outrageous.

Mr J.R. QUIGLEY: This is the first time this evening that the Minister for Police has heard from me on the Misuse of Drugs Amendment Bill 2011. I want to make this comment because it puts into context the question I want to ask the minister. In the minister's second reading speech, he said there were three remaining issues to be addressed by the Misuse of Drugs Amendment Bill 2011. The first was a crackdown on drug dealers who sell or supply illicit drugs to children, which is clear enough, and the second was to protect children from endangerment by tightening sentencing for exposing children to harm or danger of serious harm as a result of the manufacturing of prohibited drugs and the cultivation of prohibited plants. I understand that, but it appears that the intent of the legislation is to protect the community from the sorts of events that we often see Superintendent Carver attending; that is, clandestine drug lab explosions. However, it appears that knitted into this legislation is the cultivation of prohibited plants, which, per se, do not create endangerment; the ingestion or the smoking of it does. I am, of course, talking about cannabis. A myriad of circumstances is presented to the courts on a daily

basis. Bearing in mind that the test of the integrity or soundness of the law is not in the middle of the law but at its edges, we will want to see with what certainty in the courts the definition of "drug paraphernalia" stops. The minister talked about shishas and hookahs. I have recently seen what I was told was an amphetamine pipe. Superintendent Carver might be able to help us here. It was a small metal pipe with a very small metal bowl. It did not appear as though tobacco could be put in it because it was too small. Where is the cut-off point? Under the bill, the definition of "drug paraphernalia" is, in part, any thing made or modified to be used in connection with or preparing a prohibited plant for administration to a person or for smoking. That takes us to the issue of the size of the pipe. Once cannabis is put into this legislation, where does it stop? At what size does a pipe become a pipe that is not illegal to possess? I do not know whether T. Sharp Tobacconist still exists. It used to be on the corner of Barrack and Hay Streets and it had a variety of all sorts of pipes. We could even go down to cigarette papers in the case of cannabis. Cigarette papers are a product that is made for smoking or ingesting by a person. My difficulty here is that the government appears to have knitted cannabis into this legislation. We wholly support the government's initiative in upping the penalties for clandestine laboratories and amphetamine laboratories, or whatever they produce, and which we have seen explode. Where is the cut-off point for this other paraphernalia that is clearly used in the course of smoking or ingesting a prohibited drug?

Mr R.F. Johnson: You referred to cigarette papers. They are not manufactured for the purpose of smoking cannabis; they are made for the purpose of smoking tobacco. If they are used for smoking an illegal substance, that is something completely different.

Mr J.R. QUIGLEY: Where is the test there?

Dr A.D. BUTI: I am enjoying what the member for Mindarie is saying and I would like to hear a bit more.

Mr J.R. QUIGLEY: Perhaps drug usage has changed since I was in legal practice. At that time, there were more bongs than amphetamine pipes. I have never seen an amphetamine pipe in a case but I am sure that they are not uncommon in cases today. I know what those big glass or ceramic bongs are and they are clearly made for a specific purpose. But people who ingest drugs use all sorts of paraphernalia. Will this legislation require the prosecution to prove beyond a reasonable doubt that the device or instrument was specifically made for the purpose of consuming a prohibited drug? Is that the test for the court? I will state that again: the test for the prosecution would be for the police to prove beyond a reasonable doubt that the device, implement or whatever is charged under proposed section 7B was made for that purpose.

Mr R.F. JOHNSON: The prosecution would have to prove that the paraphernalia was specifically to be used for an illegal purpose, and the courts would take that into account. The courts would listen to the defence. I am sure that some of the member's colleagues who would defend some of the druggies would argue that a lot of the things are not what the police say they are. That is the court situation. In their prosecution, the police would certainly have to prove —

Mr J.R. Quigley: Prove beyond a reasonable doubt.

Mr R.F. JOHNSON: Yes; they would have to prove beyond a reasonable doubt, obviously, that that paraphernalia was for the purpose of inhaling or manufacturing an illicit drug.

Mr J.R. Quigley: It almost renders nugatory the regulation exempting hookahs and shishas, doesn't it, because the police would not be able to prove that they were manufactured or possessed —

Mr M.J. Cowper: Unless they had traces of a substance.

Mr J.R. Quigley: We're not talking about that subsection yet.

Mr R.F. JOHNSON: They were put in there to stop any argument by the people who supported them. It was made quite clear that they were excluded. That is the reason they were put in there. Some people in society get a great deal of pleasure out of that. They are not smoking an illegal substance; they are smoking tobacco and that is the way they like to smoke it. As the member for Balcatta said, he has seen them smoking outside a cafe somewhere.

Mr J.R. Quigley: I note in *The Guardian* that in London they have made exclusions for non-smokers so that they can use those in Turkish restaurants.

Mr R.F. JOHNSON: And quite rightly, too.

Mr J.R. Quigley: Therefore, the regulation for hookahs and shishas is not an exhaustive list of those things that would be legal to possess. There would be a requirement on the prosecution to show that any other device was used for the purpose of consuming an illegal drug.

Mr R.F. JOHNSON: Yes.

Mr M.P. MURRAY: I will follow on from the member for Mindarie on some of the paraphernalia seen around the place, including a two-gallon bucket, a coke bottle and those sorts of things. Where would those items fit into the bill? While those items have not been made explicitly for drug use, some people would be using buckets, shotguns or whatever they want to call them. Let us say that a young bloke is walking down the road with a bucket, a big coke bottle, and probably a bit of pipe or hose but he had not manufactured these items.

Mr R.F. Johnson: There is no offence for being in possession of paraphernalia; it is an offence to sell it or use it, or if it has traces of an illegal drug on it. It is not an offence if someone picks up a coke bottle, which is not manufactured for the purpose of drug use.

Mr M.P. MURRAY: What if someone cuts the bottom out of a coke bottle with his pocket knife?

Mr R.F. Johnson: That is still not a product that has been manufactured for the purpose of drug use.

Mr M.P. MURRAY: That is what I am trying to find out. Does a person have to be in possession of a manufactured item or can a manufactured item be a coke bottle with its bottom cut out?

Mr R.F. Johnson: It would not be sold like that, so no.

Ms M.M. QUIRK: I refer to proposed section 7B(6), which talks about a person who is in possession of any drug paraphernalia in or on which there is a prohibited drug or prohibited plant committing a simple offence. I understand that the current provisions in the Misuse of Drugs Act relate only to smoking implements and this provision broadens it to include drug paraphernalia.

Mr R.F. Johnson: That is correct, yes.

Ms M.M. QUIRK: It does not mention the amount of prohibited drug or prohibited plant. I have been advised that it is detectible traces. By what method are the traces detected, and could we anticipate that as technology improves the detectible traces will become smaller and smaller amounts?

Mr R.F. JOHNSON: That is possible. I am advised that they send traces to ChemCentre for testing to obtain the evidence.

Clause put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Section 34 amended —

Ms M.M. QUIRK: Before we go to clause 9, I have a query on clause 8. I know that we have just passed it, but could the minister clarify the rationale for that clause?

Mr R.F. JOHNSON: The reason for seeking to delete sections 19A, "Selling cannabis smoking paraphernalia", and 19B, "Selling ice pipes", is that this bill will capture those areas in a much broader sense.

Ms M.M. QUIRK: I have a couple of questions in relation to this provision. I will move amendments at a later stage. By way of background I should say that clause 9 amends section 34. It provides offences in relation to "supplying, or offering to sell or supply, a prohibited drug or a prohibited plant to a child, and the person was an adult". There are three sentencing options on a first offence—suspended imprisonment, conditional suspended imprisonment and a term of imprisonment under section 39 part 13 of the Sentencing Act. For any subsequent offences, however, there is a mandatory term of imprisonment. This is a new offence, is it not, of selling to a child?

Mr R.F. Johnson: It is in essence, yes, because up until now it has simply been an offence to sell or supply illicit drugs to anybody. We are specifically highlighting a problem here and trying to deal with those adults who sell or supply illegal drugs to children.

Ms M.M. QUIRK: Say we have someone who has, on a previous occasion, been convicted of supplying drugs and it just happens that that person was a child, but of course at that stage no such offence existed and they were convicted merely of supplying a drug. If they commit an offence, post this bill being passed, of selling drugs to a child, is that counted as a first or second offence for the purposes of sentencing options?

Mr R.F. JOHNSON: They could in essence be retrospective, yes, because of the fact that a person may have previously committed an offence. I am advised the offence does not have to be committed after the new laws come into effect. If the offence had taken place earlier and the sentencing takes place later, if it covers these areas under this particular part of the bill, then yes, I suppose it is to some extent retrospective, if we can call it that. There is some element of retrospectivity.

Dr A.D. Buti: It is retrospective from the point of sentencing; it becomes operational when an offender is sentenced.

Mr R.F. JOHNSON: Yes; from the time of the offence and the time of the actual sentencing.

Ms M.M. Quirk: I have some difficulty with that because, effectively, it was not an element of the offence on the first occasion to sell to a child. The offence was actually just supplying the drug.

Mr R.F. JOHNSON: I am told the elements of the offence have not changed.

Ms M.M. Quirk: I would have thought one of the things the prosecution has to prove in this offence is that the person to whom they were supplying was a child. That is something the prosecution must prove affirmatively and beyond reasonable doubt.

Mr R.F. JOHNSON: I am sure the member for Armadale would have no trouble explaining what I have to explain to the member now. The elements of selling the drug do not change.

Ms M.M. Quirk: Is the minister saying it is a circumstance of aggravation?

Mr R.F. JOHNSON: No; it is not a circumstance of aggravation.

Ms M.M. Quirk: I was trying to help you there.

Mr R.F. JOHNSON: I appreciate the member's help. But that is not the case. It is the commission of the offence; they are not the elements of the offence of supplying the drug.

Ms M.M. Quirk: So there is no need for the prosecution to prove that the person to whom the drugs were sold was a child?

Mr R.F. JOHNSON: Not to prove the offence because the offence is selling and supply of an illegal substance.

Ms M.M. Quirk: But in order to attract the heavier penalty they will have to prove it.

Mr R.F. JOHNSON: They would have to prove that it was sold to a child.

Ms M.M. Quirk: We know that for the second offence there is mandatory imprisonment. Is that correct?

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: The reason the second offence is mandatory imprisonment is to deter people from doing it on more than one occasion?

Mr R.F. JOHNSON: That is one of the reasons. We are trying to deter people from dealing in drugs all the time, but the main thrust of this bill, as the member will be aware, is to try to deter people from selling or supplying drugs to children or putting children in the way of harm where a clandestine lab has been established. It is not only a matter of not putting children in the way of harm but also harming them. They are different aspects of the bill. The common thread through it is endangerment and harm to children by illegal drugs or the manufacturer of illegal drugs. That is the whole purpose of this legislation.

Ms M.M. Quirk: I understand that that is the outcome, but if someone commits a first offence and they get either a suspended term of imprisonment, conditional suspended imprisonment or a term of imprisonment, they will say, "Oh, I'd better not do that again because I will definitely go to jail." The minister is telling us now that if someone has a prior conviction for supplying, they will face the very real prospect of going straight to jail, not passing go and not collecting $200.

Mr R.F. JOHNSON: I want to get it right. Is the member asking that if someone already has a criminal record —

Ms M.M. Quirk: If someone has an existing record before this bill is even passed.

Mr R.F. JOHNSON: At the moment it would not necessarily specify that it was a child the drugs were sold to; it could be anyone, a child or an adult, and they are caught selling drugs to a child —

Ms M.M. Quirk: Would that be counted as a first or second offence for the purposes of the sentence?

Mr R.F. JOHNSON: As far as I understand it, it would be like a first offence. It would not be seen as a second offence for the purpose of bringing in the mandatory sentence part because the first offence would not necessarily clearly show whether the drug was sold to an adult or a child.

Ms M.M. Quirk: Presumably the prosecution could lead evidence of that. I am happy with the minister's answer. I know that is a red-letter day for him. He should go out and buy a lotto ticket.

Mr R.F. JOHNSON: If I could make the member happy, I would have achieved something wonderful.

Ms M.M. Quirk: We have assurances that this will be prospective. In other words, people who already have an existing offence, which just happens to involve a child and the supply of drugs, will not be caught as being a second offender for the purposes of this legislation.

Mr R.F. JOHNSON: Correct.

Dr A.D. BUTI: Minister, just getting back to the issue of a child, as we know, "child" in the main act refers to a person who is under the age of 18. I have no truck with the idea that people who sell drugs to children should not be penalised; none whatsoever. I am just inquiring about the absolute liability element. I understand the offences committed against a child, but in any offences there is an issue of knowledge. For instance, in regard to carnal knowledge, there is a defence that a person reasonably thought that the person was over the age of 16; that can be a reasonable belief, and that can be a defence. I am just wondering whether in this section it is an absolute liability. I understand that absolute liability is often used in drug offences. It is used, for instance, in sporting drug offences. Are we dealing with absolute liabilities so that it does not matter if the child convinced someone, and it was reasonable that they looked over 18 et cetera? Is it the fact that they are under 18 that is important, and it does not matter that someone did not think they were under 18? Is an offence still committed?

Mr R.F. JOHNSON: I am advised it is an absolute liability. It does not matter whether someone thinks they were or thinks they were not. It is as the case is now.

Ms M.M. QUIRK: I just want to talk more broadly about clause 9, because it is quite lengthy. I want to briefly talk about proposed section 34(4), and in particular the inclusion in this legislation of a prohibited plant. The minister has talked about this legislation, as I understand it, meeting two election commitments, the first was in relation to selling to minors and the second was selling drug paraphernalia. The third element has basically arisen because of, if members will excuse the pun, an explosion in the number of clandestine laboratories over recent years. In that respect, what number of clandestine laboratories are we up to today? How many for this year?

Mr R.F. Johnson: One hundred and forty-seven.

Ms M.M. QUIRK: I think we on this side of the house and those on the other side of the house accept that is unacceptable. As I understand it, in about 30 per cent of the cases involving clandestine laboratories kids are present. We absolutely understand the need for decisive legislative action to deter people acting in such a callous way that endangers innocent children. I really want to ask about cannabis. Somehow cannabis has worked its way into this legislation. I am not sure why. I am not sure whether it is of the same magnitude of a problem in terms of kids being present. What recourse do police have in terms of whether children are present? How is it that this is really the first time that there is an issue there?

Mr M.J. COWPER: I just thought I would like to chime in on that.

Ms M.M. Quirk: Who died and made you minister? I thought I asked the minister a question.

Mr M.J. COWPER: I would like to ask the minister a question as well on this very same question.

Ms M.M. Quirk: Fair enough.

Mr M.J. COWPER: Is it not true that cannabis crops can be in dangerous places and they can be set with booby traps? Is it not true that they have devices such as punji boards positioned in a fashion to injure would-be trespassers on those crops? Is it not true that they have loaded shotguns with trigger points on these crops? Is it not true that these drug crops in the bush have fish hooks hanging at eye level? Is it not true that when one goes into some hydroponic setups, they are protected by electronic devices that can have the potential to cause fatal injuries as a result of electric shocks?

Mr R.F. JOHNSON: I could not have put it better myself.

Ms M.M. Quirk: You couldn't have put it better at all.

Mr R.F. JOHNSON: He is absolutely right. A lot of what the member was talking about was in relation to crops of cannabis that are being grown, but what we are trying to cover here is also the hydroponic cannabis that is grown in homes and properties.

Ms M.M. Quirk: The legislation doesn't say that, minister. The legislation just talks about the cultivation of the plant. Okay, so it could be one?

Mr R.F. JOHNSON: It can be one, yes.

Ms M.M. Quirk: It can be one in a pot plant? So there could be a situation where a two and a half year old child who is active and crawling around the house happens to crawl past the one measly pot plant that is on someone's

patio, the pot plant falls over, hits the child on the head, and the child grazes their forehead causing actual bodily harm. This would be included in this legislation, wouldn't it?

Mr R.F. JOHNSON: I am advised that the types of plants that the member is referring to may have been around 20 years ago, but —

Ms M.M. Quirk: I'm showing my age, minister.

Mr R.F. JOHNSON: I know, but I am told—I think I know what they look like from seeing them on television—that they are much bigger now, and the purpose of this is —

Ms M.M. Quirk: They don't start big, minister. They start as seeds, so potentially they could be six inches high.

Mr R.F. JOHNSON: I am told they are five times stronger than they were 15 years ago.

Ms M.M. Quirk: Could you just answer the question? Is the scenario that I put to you covered in the legislation?

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: If just an ordinary terracotta pot with a six-inch marijuana plant growing in it happens to fall over and graze the child's forehead —

Mr R.F. JOHNSON: They should not have been growing the cannabis plant in the first place, because it is illegal to do that.

Ms M.M. Quirk: How many children have been admitted to hospital this year as a consequence of injuries related to the cultivation of marijuana?

Mr R.F. JOHNSON: I cannot give the member that information. They do not keep records of that.

Ms M.M. Quirk: We can work it out from the number of labs—147—and you are talking about 30 per cent of 147, so roughly speaking that is 50 instances a year where a child or children are exposed to very dangerous and noxious fumes through clandestine labs.

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: You cannot give us any figures in relation to exposure of children to the cultivation of cannabis plants in situations in which they are either likely to be harmed or in which actual bodily harm can be caused?

Mr R.F. JOHNSON: I cannot give the member that information tonight; I am pretty certain of that.

Ms M.M. Quirk: So how do you know it's a problem?

Mr R.F. JOHNSON: We know that cannabis is a substance that is bad for people, and for children in particular. The member and I may have different views on cannabis; the member may feel that cannabis is a harmless drug that people can have —

Ms M.M. Quirk: No, I believe in evidence-based legislation, minister. If you can establish to us that there is a real threat —

Mr R.F. JOHNSON: It is an illegal substance, and that is why it is included in here.

Ms M.M. Quirk: These provisions are about endangering children.

Mr R.F. JOHNSON: If it is grown hydroponically, I think what causes harm to children are fumes and fires.

Ms M.M. Quirk: Why not limit it to that? Why have you just got it generally? As the member for Mindarie said earlier, it is what occurs at the outer edges that has the potential to create an injustice, especially when you are talking about potentially mandatory imprisonment. We want to know whether, if somehow a hydroponic set up, the spraying of chemicals, the use of fluorescent lights, booby traps or fire risks —

Mr R.F. JOHNSON: Fire risks, all those things, absolutely.

Ms M.M. Quirk: We understand that that is the case with hydroponics. Why don't you limit it to, for example, prescribing a number of plants or prescribing a hydroponic situation? Why is it that it could cover the six-inch cannabis plant in a terracotta pot?

Mr R.F. JOHNSON: Because we think that cannabis, in whatever form and in whatever quantity, is a dangerous drug.

Ms M.M. Quirk: All right. If you can produce the evidence tomorrow, minister, of instances in which this occurred —

Mr R.F. JOHNSON: I will try to find out. I cannot guarantee it, but I will try to find whatever information I can.

Dr A.D. BUTI: Further on that, I refer to the life, health and safety of the child. Of course, as the minister said, drugs are harmful, but this really is beyond the issue of a drug being harmful; it is looking at the cultivation of the drug being harmful and endangering the life, health and safety of a child. Is the minister saying that it will be up to the judiciary to just take judicial notice of what life, health and safety mean, or are there some guidelines under occupational safety and health regulations? The reason I ask that is that, as the member for Girrawheen mentioned, we are looking at mandatory sentencing, and the last thing we want to do in some respects is to imprison people so that they become worse drug offenders, because, as we know, the prison system is, unfortunately, full of drugs and people who have been in contact with drugs. I want to make it clear that I am not saying that people should not have a punishment if they endanger the life, health and safety of a child under the age of 16 years, but I am just wondering what guidelines we are working with. Is it just judicial notice, and we will leave it up to the magistrate to determine what is life, health and safety risk, or are we abiding by some guidelines?

Mr R.F. JOHNSON: The member is probably aware of the answer because I think he is a pretty clever lawyer. The courts already have in the Criminal Code an established way of interpreting the endangerment of life, health and safety that they use; they already do that. It will be no different when they are interpreting this area in this bill and in the act from the way that they —

Dr A.D. Buti: So it's basically judicial notice. That's fine.

Mr R**.F. JOHNSON**: Basically, yes.

Ms M.M. QUIRK: In relation to the endangerment issue, I think I have described on a couple of occasions in this place the issue of possible brain damage or the like to young children. That will not readily become apparent, yet it is probably the upper end of the scale. So if a very young child is exposed to the fumes, it may well not be until that child becomes older that it is apparent. It is an unfortunate situation here that the person will be charged with the lesser offence rather than with causing actual harm. Is that a correct assessment?

Mr R.F. JOHNSON: Yes. The police and the prosecutors have to convince the court of the endangerment and the effect of it. If they do not have the evidence until some years down the track, it will be very difficult. However, I understand what the member is saying. It is a tragic event when a child is exposed to dangerous drug fumes and whatever else and the health effects on that child cannot be seen immediately. Certainly, they might be found a few years down the track, and by then it is too late. That is a tragedy, but I do not think we can do much about that.

Ms M.M. QUIRK: Subclause (3)(a), which relates to a first offence, provides that the court has three sentencing options—suspended imprisonment, conditional suspended imprisonment or a term of imprisonment. In the case of one of those three options, conditional suspended imprisonment, would the minister envisage that offenders may well have their term of imprisonment suspended conditional upon getting drug treatment? In that regard, what percentage of those offenders would themselves be addicts and small-time users, basically manufacturing for their own consumption?

Mr R.F. JOHNSON: I am advised that the estimate is that around 90 per cent of those labs would be for predominantly home consumption or self-consumption. But I think that in that 90 per cent there are also people who do sell and supply to other people. So it is for their own consumption initially, but I think we will find that there is a good percentage who sell or supply other people with those drugs that they manufacture.

Ms M.M. Quirk: They sell or supply for the purpose of fuelling their own addiction?

Mr R.F. JOHNSON: Yes.

Ms M.M. Quirk: So almost 100 per cent would themselves be users?

Mr R.F. JOHNSON: I am told it is about 90 per cent. The detective superintendent cannot answer the member directly, obviously —

Ms M.M. Quirk: But he was nodding when I was asking the question!

Mr R.F. JOHNSON: He is very helpful!

Ms M.M. Quirk: He is very helpful! He is one of your finest officers!

Mr R.F. JOHNSON: He is probably looking forward to getting home to his family as well. What was the other question?

Ms M.M. Quirk: The minister said 90 per cent would not supply other than to themselves. What would be the percentage who in fact are users?

Mr R.F. JOHNSON: I am told that about 100 per cent would probably be users, but there is a portion of those who would be selling and supplying to others, and in different quantities.

Ms M.M. Quirk: Where there is this option of conditional suspended imprisonment, would the minister concede from a government perspective that the prospect of getting the vast majority of those drug manufacturers into some program to break the cycle could potentially have good outcomes in terms of the drug trade at that level?

Mr R.F. JOHNSON: The court can actually impose a program.

Ms M.M. Quirk: Yes. That is what I am saying. That can happen on the first offence but not on subsequent offences, because there is no discretion to do that.

Mr R.F. JOHNSON: On a subsequent offence, I am advised that they would almost certainly get a treatment program inside prison.

Ms M.M. Quirk: They would not. I can tell the minister right now that they would not almost certainly get a treatment program, because the demand outstrips the supply.

Mr R.F. JOHNSON: They would be eligible.

Ms M.M. Quirk: Mr Penn knows, because he has previously worked for the Department of Corrective Services. He is more than aware that not everyone who wants a program can get it.

Mr R.F. JOHNSON: Okay.

Ms M.M. QUIRK: Just to continue on with that, minister, in terms of effectively doing something about the drug problem, yes, people need to be punished for this heinous behaviour. But the minister would accept also that to really make a difference, the option of a program, with or without imprisonment, would give the sentencer a lot more flexibility. That is especially so when we are talking about all of those users, the majority of whom are addicts.

Mr R.F. JOHNSON: Yes.

Mr J.C. KOBELKE: I would like to follow through and get a bit of further information on the answer that the minister just gave to the member for Girrawheen, when he indicated, with the advice of the senior officer that he has with him, that about 90 per cent of the clandestine drug laboratories that the police have found out about and have been able to clean up and make an arrest or lay charges about would appear to be operated by low-level people who are predominantly feeding their own use, although they may sell a bit because they are addicts. Ten per cent are perhaps more professional; that is, either organised crime or trying to do it on a large scale. I accept that 10 per cent is a rough estimate, and that we are not talking about someone having analysed the exact numbers. However, I would like some clarification about the 10 per cent. As I said in my contribution to the second reading debate, and the point I think the member for Girrawheen is also getting at, when dealing with addicts, the issue is medical, albeit locking them up may be the only way to deal with them and the charges outlined here may be appropriate. However, when dealing with people who set out simply to make money from drugs, the most severe penalties available under this act I think will have the absolute support of everyone. I am seeking some information or an indication of how many of the 10 per cent can be judged as professional; that is, they use a better quality of gear and have a much larger volume of production. Is there just a handful or are the police coming across a lot of them?

Mr R.F. Johnson: It is difficult to give a precise answer to the member's question. Whenever there is a drug bust on one of these clandestine labs, the police are very happy to advertise how many drugs they have managed to take from the drug manufacturers and dealers—that is, the number of amphetamines and the amount of cocaine or whatever else it is. They show quite clearly the level and quantity of seriously hard drugs.

Mr J.C. KOBELKE: I will clarify, and I thank the minister for answering by way of interjection. My question is not centred on a drug bust in which there is a volume of drugs and/or money et cetera. My question is about a planned clandestine drug laboratory—that is, evidence of people manufacturing drugs at a place the police come to know about. In that circumstance, how often—that is what is an estimate of the volume—do police believe they are dealing with people who seek to produce drugs on a moderate to large scale for sale through their networks and are not just about supplying their own needs?

Mr R.F. Johnson: The 90 per cent that we are talking about would yield about one gram or less—that is the average. The member wants to know what size or quantity of drugs is found on average in the larger ones; that is, the 10 per cent.

Mr J.C. KOBELKE: Yes—or the range. There might only be one in 100 in which thousands of tablets are produced or there might be 10 in 100 in which they are producing thousands of tablets.

Mr R.F. Johnson: It has been explained to me that the police have come across one or two labs in which they have found anything from one gram to about 250 kilograms. It is difficult —

Mr J.C. KOBELKE: Are those one or two in one year, minister, or are we talking about two or three years?

Ms M.M. Quirk: And are they in Perth?

Mr R.F. JOHNSON: The police have gone into these clan labs and have perhaps been a bit too late to catch the quantity of drugs that were there, but they have evidence to show that a large quantity was there prior to the police going in. In other words, the evidence shows the drugs were manufactured on site in what quantities, but unfortunately the police have missed out on capturing the drugs. It varies, obviously, but there is no safe quantity of drugs.

Mr M.J. Cowper: Is it true that it depends also on the quality of the actual pills? I mean, you can get a quantity of pills that are high quality as opposed to low quality and, therefore, the numbers of low-quality ones can be greater?

Mr R.F. JOHNSON: We would have to get that information from the ChemCentre, which would give that information about whether it is high quality or low quality and so on and so forth.

Mr J.C. KOBELKE: I do not want to persist with this because I really think the minister has been trying to clarify it, but I would like it just a little clearer. Last year there were 133 clandestine drug laboratories and there have been about 140 so far this year.

Mr R.F. Johnson: It is 147.

Mr J.C. KOBELKE: So 150 in round terms. Of those roughly 280 clandestine drug laboratories, how many would have been judged as producing clearly for the market? As the minister indicated, the police may have information that it looked like large quantities were being produced but those large quantities were not there at the time of the raid.

Mr R.F. Johnson: We can't give you that information tonight. I will try to get the information for you, I want to, but —

Mr J.C. KOBELKE: I am trying to get some indication. The minister said that about 90 per cent of these clandestine drug laboratories are at the lower end in that they are primarily for addicts for their self-use, although they might market a bit of it, but that goes right through to the Mr Bigs who go in for fairly large-scale production, and there will be some in between. I want a rough estimate of what the minister sees as moderate sized and clearly being produced for market, and how many seem to be fairly large ones. Obviously, I am not expecting the exact number, but could the minister give us a breakdown of that 10 per cent in rough numbers in those categories?

Mr R.F. Johnson: I will try to get you that information tomorrow some time, but I just cannot give you that information tonight.

Mr J.C. KOBELKE: I would appreciate it if the minister could do that.

Ms M.M. QUIRK: I think the member for Balcatta has brought up an interesting point. We are not trying to keep our colleagues up, but I think that these issues go squarely to the matter of sentencing and how these people are treated. As I understand it, Western Australia is somewhat unique in that the Nazi–Birch method is used in the manufacture of amphetamines and we have a two-tier drug use system, if we like. We have those who have a high disposable income who get the good quality amphetamines sent to Western Australia by organised criminals from the east coast and we have the down-and-out addicts who cannot afford amphetamines, because the price is so high here because the market is so buoyant, who are reduced to manufacturing their own in the boots of cars, sheds and whatever with buckets and whatever they have. There really is a two-tier system here, so this idea of the clan lab is almost unique; that sort of back-of-the-house sleep-out clan lab, if we like, is unique to Western Australia. We need to be very clear that we are not dealing with the Carl Williams's of this world or serious organised criminals; we are talking about people who—I am not defending their actions because it is indefensible if they have kids in the clan labs—are a different genre of criminal from the Mr Bigs.

Mr J.C. KOBELKE: Hopefully, this will be the last contribution I make and I thank the minister for his willingness to try to answer the questions. I want to come back to the intent of clause 9 and my concern that these more severe penalties will not work when it comes to people who are low-level addicts. I think that the tougher penalties that the minister has drafted in this legislation are a very good move to deal with the issue of

organised crime. When it comes to people who are addicts and the minister simply says that tougher laws will fix the problem, I cannot agree with him. It is a serious problem. We need to take action because of the impact on the community and the neighbours of these addicts and the supply of drugs. For all those reasons, we need to take effective action. Tougher penalties are not likely to be effective when we are dealing with addicts. Tougher penalties, particularly the phased provisions in this bill, which we have already talked about—I heard the member for Girrawheen talking about it—in which suspended sentences, conditional suspensions or terms of imprisonment can be imposed, can be used very effectively when we can offer these people entry into rehabilitation programs to try to help them get rid of the addiction. To the extent that this is part of a bigger scheme, I hope it can really work. If it is not part of a bigger scheme, tougher penalties will not fix the problem. When it comes to people who are manufacturing drugs to make money and that is their primary motivation, these tough penalties have 100 per cent support and we hope they are really going to work. When it comes to the other end and people who are addicts, it is much more complicated and we need a total package. I hope that we will see that sort of action to support the government's legislation; otherwise, the work that the minister and his officers supporting him have done will not deliver the outcome that we want: a real inroad to cracking down on drugs and trying to get fewer people involved in drug addiction and the drug trade.

Dr A.D. BUTI: I heartily endorse the words of the member for Balcatta. I am sure that the minister probably agrees with a lot of what was said. I refer to clause 9(4), which states —

> If a court is sentencing a person for —

Paragraphs (a), (b) or —

> (c) an offence under section 14(1),

Section 14(1) of the act states —

> A person who, without lawful excuse, has in the person's possession a substance that contains, or substances that together contain, a quantity of a category 1 item or a category 2 item that exceeds the quantity prescribed in relation to the item concerned commits a crime.
>
> Penalty: $20 000 or imprisonment for 5 years or both.
>
> Summary conviction penalty: $12 000 or imprisonment for 3 years or both.

Further in clause 9(4) it refers to offences that endanger the life, health or safety of a child, and the sentencing options are listed in paragraph (d). It is probably because it is very late but my mind is not completely clear on how one works the two penalties together—that is, penalties under section 14(1) of the main act and the provisions in clause 9(4). I am not quite sure how the connection works.

Mr R.F. JOHNSON: I am advised that under section 14 of the main act the penalty is $20 000 or imprisonment for five years or both. That is the maximum. When it comes to sentencing, the court would have a range of sentencing options available. It could be community-based orders, court-based orders, fines and so on. If these offences are committed in these circumstances, they are the only options that the court can impose.

Ms M.M. QUIRK: I ask for some clarification of subclause (4)(c), which describes an offence under section 14(1). I understand that is for possession of quantities of precursors.

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: Are there prescribed amounts before possession comes into play?

Mr R.F. Johnson: I am advised that there are for certain items. They are in schedules 3 and 4 of the Misuse of Drugs Regulations. Some of them prescribe quantities; for others, it is just about the possession of the items.

Ms M.M. QUIRK: We know that methamphetamine manufacturers scrounge around and get substances from all over the place to make it. Sometimes they are standard household items; I am thinking of caustic soda. What quantity of that is needed in the production of methamphetamine? That could potentially cause harm to a child but is not necessarily associated with the manufacture of drugs. Is there a quantity prescribed for a certain amount of caustic soda, for example?

Mr R.F. Johnson: It is a good question but we are not quite sure what the chemical compounds of it are. I would have to try to give the member that information tomorrow.

Ms M.M. QUIRK: If the minister would not mind. Would that be a case of time, place and circumstance? If there was caustic soda, which potentially could be used for the manufacture of methamphetamines but which was actually in the household for the purposes of cleaning an oven or a drain or whatever it is used for —

Mr R.F. Johnson: Yes. I am advised that would go to the ChemCentre with the rest of the evidence for analysis.

Ms M.M. QUIRK: So the fact that a kid was injured —

Mr R.F. Johnson: We can give the member an example of pseudoephedrine, which is 37 grams.

Ms M.M. QUIRK: I thank the minister.

I am sorry, but it is very late in the evening and I am not on my best game tonight, Mr Speaker.

The SPEAKER: I am working with you, member for Girrawheen.

Ms M.M. QUIRK: Do we pass clause 9 and do I then move my amendments, or do I speak to them now?

The SPEAKER: You need to move them while clause 9 is alive.

Ms M.M. QUIRK: Thank you very much. As opposed to us not being alive at this stage!

Leave granted for the following amendments to be considered together.

Ms M.M. QUIRK: I move —

Page 6, line 22 — To delete "a first" and substitute —

an

Page 7, lines 4 to 9 — To delete the lines.

Ms M.M. QUIRK: By moving this amendment, we are attempting to not make a distinction between a first and a second offence and to delete the mandatory imprisonment provisions that come into play for the second offence. For all offences under this provision, the court will have an option of suspended imprisonment, conditional suspended imprisonment or imprisonment. We believe that that gives the court discretion and that the heinous nature of the offence of exposing children, or in this case supplying drugs or prohibited plants to children, should not, for example, be punishable by just a fine or any other such penalty. However, the court is at least given an option to take into consideration the personal circumstances of the offender and for the particular range of cases and level of culpability of the offender. These amendments seek to remove the mandatory imprisonment section but still give the court three options that we believe can be attached to the community's capacity to provide a more effective solution by imposing a suspended imprisonment sentence, for example, on the condition that the person undertake a drug treatment program.

The SPEAKER: Minister, before you answer, I just want to seek further clarification from the member for Girrawheen. I am looking at page 16 of the notice paper. It is my understanding that we are dealing with the first two amendments at the moment. We are dealing only with the amendments to line 22 on page 6 and to lines 4 to 9 on page 7. We are not dealing with anything else.

Ms M.M. QUIRK: That is correct.

The SPEAKER: Thank you, member for Girrawheen. I just wanted to clarify that.

Ms M.M. QUIRK: I do need to clarify that further. Because we are seeking to have a range of penalty options for all offences, we are seeking to remove the distinction between a first and subsequent offence and to delete the special mandatory imprisonment provisions for subsequent offences.

Mr R.F. JOHNSON: Obviously, we think that is a very important part of the bill, and we will not support the member's amendments. I know that the member is not unhappy with the three sentencing options—a suspended sentence, conditional suspended imprisonment or a term of imprisonment. We understand that, but we believe that there must be something a bit tougher for a subsequent offence and that there should be a minimum mandatory sentence for causing actual harm to a child. There is a philosophical difference between members on this side of the house and those on the other side of the house about any minimum mandatory sentence. Members opposite did not agree with the minimum mandatory sentences for assaults against police officers. We feel very strongly about that and that is why we brought in that legislation. That is a difference we have. I accept the member's view and her right to have that view; that is, she is opposed to any form of minimum mandatory sentencing. But we have the same right to have the view that we believe that is an appropriate sentence to have in place. We are talking about a very small sentence. We have seen a case recently in which a magistrate gave a very extraordinary sentence to somebody who had committed hundreds of offences.

Mr J.R. Quigley: Are you talking about the graffiti one?

Mr R.F. JOHNSON: It was for criminal damage. It concerns the public. The public has a right to expect justice. Certainly, when we are talking about endangering and harming children, we must have some pretty tough legislation in place. I do not think this is too tough. If I had my way, I would send these people away —

Ms M.M. Quirk: But there is the option of imprisonment. Are you saying that you don't trust judges?

Mr R.F. JOHNSON: I am saying that I think the public has a general concern sometimes at the sentences handed down to people who commit very serious crimes. We have a philosophical difference; we will always have that difference. I do not want to keep the house any longer than necessary. We will not support the member's amendments, obviously, for the reasons that I have outlined.

Mr J.R. QUIGLEY: I feel compelled to reply to the minister and to seek clarification about the clause that he wants to retain, because one of the amendments seeks to delete proposed section 34(3)(b) in its entirety. The minister says that there is a philosophical difference and he wishes to recognise that philosophical difference. He cited in his argument in support of that the case of two days ago when a person was convicted of some hundreds of offences and was not sentenced to prison. That is the one we were talking about, is it not, minister?

Mr R.F. Johnson: That is the one that I think gave the public some concern. Somebody breached a previous sentence.

Mr J.R. QUIGLEY: The problem seems to be that that proposition is shot down because the police—I see that the minister has a superintendent of police sitting opposite him at the table—have said that they do not wish to appeal the sentence.

Mr R.F. Johnson: No, of course not. They do not; I agree.

Mr J.R. QUIGLEY: If the police do not wish to appeal the sentence, the police are recognising, for some reason beyond my constituent comprehension, that this is an appropriate sentence.

Mr R.F. Johnson: Not necessarily; that is a matter of opinion. They might take the view that they really just can't be bothered at the end of the day after going to all that trouble of catching somebody, taking them to court and using stuff on CCTV —

Mr J.R. QUIGLEY: Is that right? What the minister is saying is that the police would be happy in those circumstances to see this as the standing precedent case that would guide other magistrates.

Mr R.F. Johnson: No.

Mr J.R. QUIGLEY: Labor says that the problem is not so much in the sentences that are struck—there will always be a variance between sentences—but in those at the edge that either exceed public expectation, which is rare, or those that fail to meet public expectation, and are not properly prosecuted on appeal. We would not have this dilemma and have to force this down the throats of the courts if the prosecuting authorities properly litigated the case. How would the officers feel who took the time and trouble to go around and investigate these hundreds of offences to know that at the end of the day, when what is generally regarded in the community as an inadequately struck sentence, their bosses say, "Too bad; we don't care." What would be more demoralising for people out on the front line than to know that if a sentencer gets it wrong, the police hierarchy will say, "We don't care! Too much trouble. You boys have done the job, but we don't care." Members on this side of the chamber say that if we delete clause 9(2), which would insert new section 34(3)(b), there is still adequate discretion within the sentencing options—that is, in proposed section 34(3)(a)(i) to (iii), which does not include fines for this offence—to properly sentence the offenders and for the discretion to take into account the full range of circumstances that might come before the court. Labor says that where sentences fall outside the range, the proper way is to appeal. The minister cited the circumstances of mandatory sentences for assaults on police, but I note that in the first case that was prosecuted under that law, the Commissioner of Police had to intervene and exercise a discretion because it was a woman, a mental health escort, who during a fit or something had scratched an officer.

Ms M.M. QUIRK: I notice that the minister is not intending to respond to my colleague's questions.

Mr R.F. Johnson: It was not a question; it was a statement and he is entitled to make a statement. He and I have different views on that, but I am not going to prolong the argument.

Ms M.M. QUIRK: We asked whether the courts are effectively sentencing this sort of conduct at the moment. I would like to know the percentage, and I did ask this of the minister's advisers.

Mr R.F. Johnson: I would have to get you the information.

Ms M.M. QUIRK: The minister does not know what I am going to ask. I think the minister's advisers may already have the information, because I gave them an indication, when they gave me a briefing, that I am interested to know what percentage of persons—I understand it will need to be rough—who are sentenced for manufacturing amphetamines are receiving a term of imprisonment.

Mr R.F. JOHNSON: The member has received this already.

Ms M.M. Quirk: I have not got it with me at the moment. We also need to get it in *Hansard*.

Mr R.F. JOHNSON: In 2009, the number of charges laid was 184, convictions 141, and imprisoned 28—in other words 20 per cent; and the number of charges pending in the court process was 15. In 2010, the number of charges laid was 216, convictions 150 and imprisoned 58, which is 39 per cent; and the number of charges pending in the court process was 40. In 2011, 156 charges were laid, 30 convictions, and three imprisoned, which is 10 per cent; and the number of charges pending in the court process was 122. That should not be taken as being absolutely accurate because some cases are yet to be finalised, so we have to sort that out; particularly in 2010–11.

Ms M.M. QUIRK: The minister obviously believes that the sentences of imprisonment being imposed on people who manufacture amphetamines are too low. From what the minister has said, he is not happy with the fact that a substantial percentage of offenders are not going to prison at the moment.

Mr R.F. Johnson: I believe that those people who indulge in clandestine labs, who have the possibility of endangering the health and wellbeing, or life, of a child, or who physically injure a child because of the manufacture of heinous drug substances, at the end of the day should be given at least a minimum mandatory sentence of jail, particularly if bodily harm is caused to that child. That is what I believe.

Mr J.R. Quigley: Or engage in, not just if they harm.

Mr R.F. Johnson: For a subsequent offence, yes. If they are going to take risks with children twice, after endangering a child's life the first time, there are the three sentencing options. If they do it again—in other words, a subsequent offence—they are ignoring the health and wellbeing of that child, and I believe then a minimum mandatory sentence should be imposed.

Ms M.M. QUIRK: I am asking the minister about sentences that have already been imposed. They may or may not have had information before them about the presence of children. I suspect they do, but the minister would have to agree, for example—if I can just ask that. I am asking about sentences that have already been imposed, not about what the minister proposes to do in this bill.

Mr R.F. Johnson: We are talking about your amendments at the moment, not the actual clause. We are actually talking about your amendments rather than the clause itself.

The SPEAKER: There is no-one on their feet. I give the call to the member for Girrawheen.

Ms M.M. QUIRK: If I can put it this way: the minister would agree, from the figures he has given me, I think he mentioned it was something like 20 per cent were sentenced to imprisonment in the first year—is that correct?

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: Can you give me the percentages again, please.

Mr R.F. Johnson: Twenty per cent in the first year, 39 per cent in the second year, and 10 per cent so far.

Ms M.M. QUIRK: We are probably looking at 20 per cent, into the 30s—39. We are almost looking at a doubling of imprisonment in two years. Does the minister concede that may well be reflected by the judges or magistrates realising that this conduct is more prevalent and needs to be deterred? Would the minister hasten to add an opinion on this?

Mr R.F. Johnson: We are talking about the member's amendment; we are not talking about the clause itself. I am convinced that the clause is right as it is. I do not support your amendment. I suggest you let it go to the vote now, quite frankly, because we are not going to agree on it. I disagree with your amendment. You propose your amendment; I reject it.

Ms M.M. QUIRK: I am asking the minister why he does not trust the courts and why he says, "I've got to impose my dictate on the courts because I don't trust that they'll sentence according to the criminal —

Mr R.F. Johnson: They are your words, not mine.

Ms M.M. QUIRK: So the minister is saying he does trust the courts?

Mr R.F. Johnson: I am not saying anything.

Ms M.M. QUIRK: You are not saying anything.

Mr R.F. Johnson: No.

Ms M.M. QUIRK: So the minister is sitting on the fence?

Mr R.F. Johnson: No. I am just not saying anything.

Ms M.M. QUIRK: We are passing legislation and the minister has no view one way or the other about its effectiveness; is that the case?

Mr J.R. QUIGLEY: We are speaking about the amendment. The amendment is to delete lines 4–9. If the minister could indulge me for one moment, we are seeking to delete these words, which I do not quite understand —

> … for any subsequent offence (whether or not under the same provision) the court —
>
> (i) must impose …

We are trying to delete that. Can the minister explain the words "(whether or not under the same provision)"? Proposed subsection 34(2)(b) involves selling, supplying or offering to sell or supply a prohibited drug. I am trying to work out the meaning of the words in parentheses. It is a serious question, Mr Speaker. Does the minister understand what I am asking?

Mr R.F. Johnson: The proposed section refers in part to "… involved selling or supplying, or offering to sell or supply, "

Mr J.R. QUIGLEY: A prohibited drug.

Mr R.F. Johnson: Yes.

Mr J.R. QUIGLEY: This is the mandatory sentencing proposed subsection under the same provision.

Mr R.F. Johnson: We are saying it can be any one of those areas of selling or supplying. Do you understand that?

Mr J.R. QUIGLEY: I understand what the minister is saying. This is genuine concern; it is not a filibuster. I understand the minister is informing me that it does not matter whether the previous offence was for supplying or offering to sell or one of those alternatives.

Mr R.F. Johnson: Yes.

Mr J.R. QUIGLEY: But the words themselves say "(whether or not under the same provision)". Might not that be interpreted as another provision of the legislation that does not relate to section 9(2) or 9(3) of the act—in other words, another offence under section 7A(1)?

Mr R.F. Johnson: The advice I am getting is that you are talking about a subsequent offence.

Mr J.R. QUIGLEY: Whether or not under the same provisions?

Mr R.F. Johnson: And it has to come back under that kind.

Mr J.R. QUIGLEY: Whether or not it is under this provision of the legislation or another provision of the legislation, so that if someone is convicted under another section of the legislation he might nonetheless be captured under mandatory sentencing under this section. That is my concern.

Mr R.F. Johnson: I am told that in parliamentary counsel's view it relates only to this area we are talking to now in the bill. That is what my advisers have told me and they have talked to parliamentary counsel.

Mr J.R. QUIGLEY: I know the courts will look to this speech for guidance in their interpretation of the legislation but I do not follow that as a legislative necessity where it says "(whether or not under the same provision)". Does that limit it to sections 9(2) and 9(3)?

Mr R.F. Johnson: My adviser says it means that the first offence might be a selling offence, but it does not mean that it has to be a selling offence for the second offence so long as it is covered within the different areas of selling, supplying or whatever.

Mr J.R. QUIGLEY: Why could it not be, for example, for any subsequent offence, one of the offences provided for in proposed section 7B, for example—a person has a previous offence, not under the same provision, but under provisions in proposed section 7B. I do not know whether that makes sense to the professor.

Mr R.F. Johnson: We want to target only these types of offences here.

Mr J.R. QUIGLEY: Understood.

Dr A.D. BUTI: I am very interested in the words of the member for Mindarie and I would like to hear more.

Mr J.R. QUIGLEY: Should it not be "for any subsequent offence under this section", so that it is not another provision elsewhere in the legislation?

Mr R.F. Johnson: I am told that these proposed sections do not create offences. The offences are created somewhere else in the legislation. Section 34 simply deals with penalties.

Mr J.R. QUIGLEY: Thank you.

Amendments put and a division taken with the following result —

Ayes (16)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr C.J. Tallentire
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.C. Kobelke	Mr P. Papalia	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*

Noes (20)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Mr P.T. Miles
Mr F.A. Alban	Mr M.J. Cowper	Mr R.F. Johnson	Ms A.R. Mitchell
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr D.T. Redman
Mr I.M. Britza	Mr J.M. Francis	Mr J.E. McGrath	Mr M.W. Sutherland
Mr T.R. Buswell	Mr B.J. Grylls	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*

Pairs

Mr P.C. Tinley	Mrs L.M. Harvey
Mr R.H. Cook	Dr E. Constable
Mr A.P. O'Gorman	Dr M.D. Nahan
Ms R. Saffioti	Mr C.J. Barnett
Mrs C.A. Martin	Mr C.C. Porter
Mr A.J. Waddell	Mr T.K. Waldron
Mr E.S. Ripper	Dr K.D. Hames
Mr B.S. Wyatt	Mr J.J.M. Bowler

Amendments thus negatived.

Ms M.M. QUIRK: I move —

Page 7, lines 12 and 13 — To delete the lines.

As I pointed out earlier, we do not believe we have had a satisfactory explanation from the minister as to the prevalence of the cultivation of marijuana plants as being on the same level of endangerment to children. He has not been able to give us one example, while on the other hand we have given him examples of situations in which we believe there would be significant injustice caused if particular conduct was caught by this clause. Therefore, this amendment amends the provision dealing with the cultivation of a prohibited plant. We do not believe that that is the mischief of the legislation; we believe that it should be focused on clandestine labs and the use of noxious chemicals. Therefore, we are seeking to delete those lines.

Mr J.R. QUIGLEY: In relation to what the member for Girrawheen said, and as the minister has his adviser with him, is the minister able to offer any example in which the life of a child or someone else has been endangered by the cultivation of a cannabis plant? The minister has the superintendent there. I am not aware of any from my own experience. As the minister has the superintendent of organised crime with him, he may be able to offer an example. The minister looks relieved; he looks as though he got some advice.

Mr R.F. Johnson: Yes. I am always relieved when I get some interesting information.

Mr J.R. QUIGLEY: Yes, exactly; so I will wait with anticipation.

Mr R.F. Johnson: The difference is that it can take years sometimes to find the harm that cannabis has done to somebody. If a child has come into contact with it—if it has been sold or supplied to a child, and they have been in a place where it is being grown hydroponically —

Mr J.R. QUIGLEY: This is to do with cultivation, though, is it not?

Mr R.F. Johnson: Yes; if it is being grown hydroponically or whatever and the fumes from that have affected the child, we cannot always tell straightaway, as I said earlier. It could be some years down the track before —

Mr J.R. QUIGLEY: The minister is not aware of any case involving the act of cultivation per se. We support the minister and we support the police and the wonderful work they are doing against the clandestine drug laboratories and the dangerous chemicals involved. We have a couple of plants next to our place. One of the next-door neighbour's plants is an oleander bush that we try to keep the kids away from because of the sap. There is another one, which I think is a Japanese pepper tree or something like that, and the berries come over the fence and I understand they are quite poisonous. I understand that the ingestion of any plant can endanger a child, but how does the cultivation of a plant per se endanger —

Mr R.F. Johnson: It is any cultivation, but it is predominantly in the hydroponics area. That is why we said cultivation; we covered it completely. You have a different view about cannabis from what we on our side of the house have.

Mr J.R. QUIGLEY: No; we are talking about danger. It is not a different view about cannabis. I take the member's point.

Mr R.F. Johnson: We think it's more dangerous than you do.

Mr J.R. QUIGLEY: Some of the police photographs that I have seen with the electrical wire set-ups for hydroponic production do, I concede, look dangerous.

Mr R.F. Johnson: It's only a matter of time before a child gets electrocuted.

Mr J.R. QUIGLEY: Exactly. I can understand the argument so far as hydroponic production goes.

Ms M.M. Quirk: It's got to be prohibited.

Mr J.R. QUIGLEY: Yes, but a prohibited plant growing in the garden could never, by the act of growing, endanger anybody, could it?

Mr R.F. Johnson: So it doesn't matter whether you're going to manufacture a few drugs to supply a few people. You don't see that being as serious as somebody —

Mr J.R. QUIGLEY: No; it is the endangerment of the cultivation.

Mr R.F. Johnson: I know, but it is the same sort of thing. They are all drugs. Look, we have a different view. I suggest you might just want to put this to the vote and let people go home.

Mr W.J. JOHNSTON: I am trying to clarify what the minister is saying about this clause. Is the minister saying that there needs to be a direct connection between the cultivation of the plant and the injury, or an indirect connection between the cultivation of the plant and the injury? It is not clear from the answer the minister has given so far that that point has been explained. That is a very, very important issue. Let us take asbestos as an example. Asbestos can cause an indirect injury to someone but not a direct injury. Is that what the minister is saying? Is it what happens to the plant? Let us look at a chemical that is being used for a drug lab. There is no question that if we have a whole pile of flammable chemicals in our kitchen, that is dangerous. Nobody would question that. If the thing blows up, there will be serious injuries. But I am not sure about what the minister is saying, and that is why I need the minister to clarify this matter. Is the minister saying that the plant has to be dangerous in the same way that the ether or whatever other chemical is being used is dangerous; that is, that the plant is going to explode?

Mr R.F. Johnson: It is the cultivation of the plant.

Mr W.J. JOHNSTON: So the cultivation is enough to be a danger?

Mr R.F. Johnson: Yes. That is the offence.

Mr W.J. JOHNSTON: What offence?

Mr R.F. Johnson: Cultivation.

Mr W.J. JOHNSTON: Yes. I understand that that is an offence, but I am not sure how that relates to the provision that we are discussing.

Ms M.M. Quirk: Endangerment or actual harm.

Mr R.F. Johnson: I refer you to page 7, proposed section 34(4), where it says, after paragraphs (a), (b), and (c) —

> committed in circumstances where the acts constituting the offence endangered the life, health or safety of a child under 16 years of age ...

Mr W.J. JOHNSTON: Is the minister saying that the cultivation endangers the life? Is that what the minister is saying?

Mr R.F. Johnson: The offence is the cultivation.

Mr W.J. JOHNSTON: So the cultivation is the endangerment?

Mr R.F. Johnson: Yes, and that is the offence—the acts that constitute cultivation endanger.

Dr A.D. BUTI: The question asked by the member for Cannington is quite clear. What the member wants to know whether the minister is saying that this provision is drafted in such a way that the act of cultivating the

plant endangers the life, health or safety of a child under 16 years of age. I do not think that is actually what the minister is saying. I do not think that is what the minister means. What the minister is saying is that cultivating the plant, plus something else, will lead to endangering the life, health or safety of a child under 16 years of age. Otherwise, if we go back to the first interpretation, the pure act of cultivating a plant —

Ms M.M. Quirk: Photosynthesis is going to be very dangerous!

Dr A.D. BUTI: What the minister could say is that the cultivation of a plant will endanger the life of a child, because that child eventually might smoke the plant. But the minister cannot say that just because someone is cultivating a plant, that endangers the life of a child under the age of 16, which can lead to draconian—well, maybe not draconian, but quite severe penalties, including mandatory sentencing. We have to work out the causal relationship. There is a simple principle in law that we have to show the causal relationship. Where is the causal relationship here? The minister is saying the causal relationship is the actual cultivation of the plant. That cannot be so. That does not make sense. That actually makes this offence, which has a mandatory custodial penalty attached to it, an absolutely absurd offence. It cannot just be the cultivation. Where is the causal relationship between the cultivation of a prohibited plant and endangering the life, health or safety of a child?

Mr M.J. Cowper interjected.

Dr A.D. BUTI: Yes, member for Murray, it can lead to that, but not of itself.

Mr M.J. Cowper: Agreed.

Amendment put and a division taken with the following result —

Ayes (16)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr C.J. Tallentire
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr P.B. Watson
Mr W.J. Johnston	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.C. Kobelke	Mr P. Papalia	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*

Noes (21)

Mr P. Abetz	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.M. Francis	Mr J.E. McGrath	Mr A.J. Simpson *(Teller)*
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	
Mr T.R. Buswell	Mr A.P. Jacob	Mr P.T. Miles	
Mr G.M. Castrilli	Dr G.G. Jacobs	Ms A.R. Mitchell	

Pairs

Mr P.C. Tinley	Mrs L.M. Harvey
Mr R.H. Cook	Dr E. Constable
Mr A.P. O'Gorman	Dr M.D. Nahan
Ms R. Saffioti	Mr C.J. Barnett
Mrs C.A. Martin	Mr C.C. Porter
Mr A.J. Waddell	Mr T.K. Waldron
Mr E.S. Ripper	Dr K.D. Hames
Mr B.S. Wyatt	Mr J.J.M. Bowler

Amendment thus negatived.

Ms M.M. QUIRK: I move —

Page 7, line 20 — To delete "a first" and substitute —

an

This amendment is similar to the previous and relates to the idea of having three sentencing options and not making a distinction between first and second offences.

Mr R.F. Johnson: Similarly, we will oppose that. We do not support it.

Ms M.M. QUIRK: I reiterate that the opposition does not believe the minister has established that the current sentencing options and the way the judiciary conducts itself mean that it will not reflect the seriousness of the offence of manufacturing drugs while kids are present by imposing an appropriate sentence.

Amendment put and a division taken with the following result —

Ayes (15)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr M.P. Whitely
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Pairs

Mr P.C. Tinley	Mrs L.M. Harvey
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Mrs C.A. Martin	Mr C.C. Porter
Mr A.J. Waddell	Mr T.K. Waldron
Mr E.S. Ripper	Dr K.D. Hames
Mr B.S. Wyatt	Mr J.J.M. Bowler

Amendment thus negatived.

Ms M.M. QUIRK: I move —

Page 7, line 30 to page 8, line 20 — To delete the lines.

This is basically similar to the previous amendments. It will remove the distinction between first and second offences so that in fact there are three alternatives that can be imposed for all offences under these provisions.

Amendment put and a division taken with the following result —

Ayes (15)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Ms M.M. Quirk	Mr M.P. Whitely
Mr W.J. Johnston	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman *(Teller)*
Mr J.C. Kobelke	Mr P. Papalia	Mr C.J. Tallentire	

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Mr P. Abetz	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
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Mr I.C. Blayney	Mr J.M. Francis	Mr J.E. McGrath	Mr A.J. Simpson *(Teller)*
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	
Mr T.R. Buswell	Mr A.P. Jacob	Mr P.T. Miles	
Mr G.M. Castrilli	Dr G.G. Jacobs	Ms A.R. Mitchell	

Pairs

Mr P.C. Tinley	Mrs L.M. Harvey
Mr R.H. Cook	Dr E. Constable
Mr A.P. O'Gorman	Dr M.D. Nahan
Ms R. Saffioti	Mr C.J. Barnett
Mrs C.A. Martin	Mr C.C. Porter
Mr A.J. Waddell	Mr T.K. Waldron
Mr E.S. Ripper	Dr K.D. Hames
Mr B.S. Wyatt	Mr J.J.M. Bowler

Amendment thus negatived.

Mr R.F. JOHNSON: I move —

Page 8, after line 20 — To insert —

(6) The Minister must carry out a review of the operation and effectiveness of the amendments made to this section by the *Misuse of Drugs Amendment Act 2011* section 9 as soon as practicable after the expiry of 3 years from the commencement of that section.

This amendment simply ensures that there is a review of this part of the bill after three years to make sure it is working properly and to see whether there are any problems. If any areas need changing, we can do that. I commend the amendment to the house.

Dr A.D. BUTI: Of course this act should be reviewed. Because of the incredible provision that the minister has included that we tried to amend, I do not think we should be waiting for three years. This part of the bill should be reviewed after one day of existence because there are incredibly draconian sections in this legislation. I do not think the minister seems to understand or grasp what he is seeking to do. He is saying that the cultivation of a cannabis plant is an offence. He may say that. That is fine.

Mr R.F. Johnson: It's a fact.

Dr A.D. BUTI: It may not necessarily be a dangerous activity.

Mr R.F. Johnson: It's a fact; it's an offence.

Dr A.D. BUTI: Okay, it is an offence. Then the minister tried to causally link that to endangering the life, safety and health of a child under 16 without showing us where the link is. As the member for Murray has articulated, there can be a linkage, and he mentioned some of the examples. As the minister responsible for this legislation, as the police minister in a state in which people are being beaten up and excessive force is used against members of the public by the police, he will not do anything about that. He now wants to put people in prison without showing us the legal causal link between cultivating a cannabis plant and endangering the life, health or safety of a child under 16. Is the minister saying that if a child is in the presence of one plant, their life is in danger?

Mr R.F. Johnson: It's possible.

Dr A.D. BUTI: A lot of things might be possible. For the minister to say, in response to my rhetorical question, that that is possible is absurd. It is absurd for a minister of the Crown, the police minister of the state of Western Australia, to say it is possible that the cultivation of one cannabis plant could endanger the life, health or safety of a child under 16. That is absolutely amazing. If the minister is to review this legislation after it comes into operation, please do not wait for three years; it should be reviewed after one day because it is an absolute blight on his ministerial capabilities and performance that we will pass legislation for which the minister is unable to show us the causal link between cultivating one cannabis plant and endangering the life, safety or health of a child under 16 and which will lead to the mandatory sentencing of the offender. The minister does not want to allow the judiciary any discretion in the matter because he believes that he knows better. The minister actually does not know better. I would always bet that a judge would know more than the minister in this area.

Ms M.M. QUIRK: I have just a couple of questions. I am very pleased that the minister seems to have had a conversion on the road to Damascus and is inserting this amendment, which we welcome. I want to ask the minister a sincere question; I am not taking the proverbial out of him.

Several members interjected.

Ms M.M. QUIRK: No, I am not; the box is full. Why has the minister decided that a review provision would be handy in this case when we have had quite robust debates on other legislation and the minister has declined to insert a review provision?

Mr R.F. JOHNSON: The simple answer is that I am being consistent. There is a review provision, as the member is aware, under the minimum mandatory sentences legislation for assaults against police officers. Because this is a minimum mandatory sentence for putting a child in danger of harm or risking the child's health by selling, supplying or manufacturing drugs, I believe it is appropriate to have a review period, and I have suggested three years, which I think is reasonable.

Ms M.M. Quirk: By way of interjection, and then I promise that I will finish—when the member for Central Wheatbelt shuts up—you suggested that it is appropriate to have a review provision in cases where there is the potential for an injustice to occur or for the application of the law to be applied inappropriately. Is that what you have just told us?

Mr R.F. JOHNSON: No, it is not. The member is trying to put words in my mouth. That is very naughty of her. I did not say anything like that. It is most unfair of the member to insinuate that that is what I said. The member knows exactly what I said. I have said that I believe it is consistent with the review that we instigated in the legislation for the minimum mandatory sentences for assaults against police officers. It is a matter of being consistent in that area. It is for no other reason. I just think it would be very useful to review the effectiveness of the legislation in three years. That is the simple reason.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 10 to 15 put and passed.

Title put and passed.