

**MISUSE OF DRUGS AMENDMENT BILL 2010**

*Introduction and First Reading*

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

Explanatory memorandum presented by the minister.

*Second Reading*

**MR R.F. JOHNSON (Hillarys — Minister for Police)** [12.18 pm]: I move —

That the bill be now read a second time.

The bill addresses some operational issues police have with the Misuse of Drugs Act 1981.

**Holding Orders:** Part V of the act requires police to obtain a holding order from a justice of the peace if they wish to continue to detain drug-connected property seized in connection with an offence for longer than 72 hours while conducting their investigation. However, the act does not require police to obtain any additional authorisation should they wish to continue to detain seized prohibited drugs, prohibited plants or dangerous substances, which are obviously far more sensitive and valuable property. The bill abolishes the obligation on police to comply with this unnecessary and cumbersome requirement. It is considered that the protection a holding order affords to a person's property rights is suitably replaced by the contemporary measures, which will now apply in part 13 of the Criminal Investigation Act 2006 and the Criminal and Found Property Disposal Act 2006. In addition, a transitional provision has been included in the bill to ensure that all drug-connected property held in storage under the authority of a holding order will upon proclamation of the bill be taken to be seized property for the purposes of the Criminal and Found Property Disposal Act 2006. This will enable all drug-connected property police have on hand to be disposed of by the alternative measures proposed in the bill.

**Destruction of contaminated drug-connected equipment:** Clandestine laboratories pose significant health and safety risks to police who are first respondents to the site. This risk is recognised in section 27(2) to (6) of the act, which enables police, provided appropriate authorisation is obtained and sufficient samples are taken, to destroy dangerous substances such as toxic and volatile precursor chemicals at the site of seizure. Police who attend clandestine laboratories desire this power for on-site destruction to be extended to include drug-connected property such as chemical glassware, filters and other apparatus that are contaminated with a dangerous substance. An amendment in the bill achieves this objective.

**Cost recovery of some destruction costs:** Police who attend clandestine laboratories are also of the view that the costs of destruction of things seized under the act should be recouped from an offender in an appropriate case. Such a case would be when a person is convicted of a manufacturing offence and contaminated drug-connected equipment and dangerous substances used in the commission of that offence have been destroyed with the assistance of a government-contracted contaminated waste disposal service. For example, with hazardous chemicals a private company transports the neutralised chemicals to a furnace either in Western Australia, South Australia or Port Hedland for final destruction. It is this cost, which is currently borne by police, over and above the cost of police resources used that it is considered appropriate to recover from a convicted offender. This mechanism will go some way to recouping these costs of destruction. The actual expense incurred by police for this service for the past five years of clandestine laboratory destructions is only \$24 000, so the amount sought to be recovered from a convicted offender in the above circumstances is not expected to be onerous.

**Compensation for destroyed items:** In order to provide an appropriate balance within the act, the bill proposes to insert a compensation clause into section 28. The proposed clause recognises the fact that some property seized at a clandestine laboratory, because it is suspected of being used in the commission of an offence, may in fact be lawful to possess—for example, ordinary household chemicals and scientific apparatus used in any laboratory seized in the context of what appeared to police to be the unlawful manufacture of prohibited drugs. If the subsequent resolution of the matter results in no person being charged, or a person being charged and tried but acquitted and any appeal against the acquittal having concluded and the seized property destroyed, a person who was entitled to possession of the property when it was seized should be entitled to recover from the state compensation equal to the property's market value at the time it was seized.

In regard to the number of likely claimants, an assessment of the likely scale of expense was obtained from South Australia Police. Section 52E(9) of the South Australian Controlled Substances Act 1984 contains a compensation provision for seized property that has been destroyed and is not forfeited to the Crown—in essence, a provision similar to that proposed in the bill. Advice from South Australia Police is that there has been only one claim in recent history and that was in 2003 for a sum of \$5 500 in relation to hydroponics equipment

that was inadvertently destroyed. There have been no further claims since 2003. Based on this information, Western Australia Police's assessment of the likely scale of claims is that it would be minimal and limited.

Conveyance of pipes and utensils containing detectable traces of drugs: The report of a joint inquiry titled "Western Australia Police Property Management Practices: Report of a Joint Inquiry by Western Australia Police and the Corruption and Crime Commission" was tabled in state Parliament on 7 March 2006. The Commissioner of Police endorsed the recommendations in the report as a means of furthering the Frontline First philosophy of policing. Recommendation 35 of the report noted that police officers are used to transport property—including drugs—between their local business area and central property storage facilities, a practice which places further restrictions on the availability of police for frontline duties, and that there is an opportunity to establish a property collection service using police staff or external providers.

The bill proposes to amend section 5 of the act to ensure the necessary legislative protection is in place to support any proposed drug collection service. The amendment seeks to protect a police staff member or external contractor when in possession of a pipe or utensil with detectable traces of a prohibited drug or plant and in the process of delivering this on behalf of Western Australia Police to a person authorised, such as an approved analyst at the Chemistry Centre (WA). This amendment mirrors similar legislative protections already found in sections 6(3), 7(3) and 14(4) of the act.

In closing, the bill seeks to assist police to more efficiently deal with seized drug property and to support the Frontline First philosophy of policing. I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.