

CANNABIS LAW REFORM BILL 2009

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) [12.20 pm]: I move —

That the bill be now read a second time.

During the 2008 election campaign, the Liberal Party released a policy document titled “Tackling Illicit Drugs in our Community: Law Enforcement”. The document outlined a number of law enforcement initiatives to tackle illicit drugs in Western Australia, the central planks of which were to: repeal Labor’s cannabis legislation, the Cannabis Control Act 2003, and reinstate the one-time cautioning system for possession only; introduce a new limit for possession of 10 grams of cannabis or less, down from the 30 grams allowed under Labor; require first-time offenders, juvenile and adult, found in possession of 10 grams of cannabis or less to attend a mandatory cannabis education program; prosecute subsequent possession offences; prosecute as criminal offences all cultivation offences; impose harsher sentences on dealers who sell or supply illegal drugs to children; provide offences for exposing children to harm from the manufacture of illegal drugs or cultivation of plants; and ban the sale of drug-use paraphernalia.

The Cannabis Law Reform Bill 2009 gives effect to the majority of these measures insofar as they relate to cannabis. Other drug-related reforms arising from the tackling illicit drugs policy document are being reviewed by a joint working party comprising representatives from the Western Australia Police and the Office of the Director of Public Prosecutions. The government is planning to bring further legislation to Parliament in early 2010 to address those other aspects.

I now outline the key aspects contained in the present bill. Part 2 of the Cannabis Law Reform Bill 2009 provides for the repeal of the Cannabis Control Act and its regulations in line with the tackling illicit drugs policy document. This is necessary as the existing cannabis infringement notice scheme established under that legislation is to be curtailed. A new model to provide for the establishment of a cannabis intervention requirement scheme is to be established under the Misuse of Drugs Act through amendments contained in part 3 of the current bill.

Part 3 of the Cannabis Law Reform Bill 2009 contains the key elements of the cannabis intervention requirement scheme, which will operate under the Misuse of Drugs Act. Cannabis offenders, both adults and juveniles, will be eligible for a cannabis intervention requirement if they are found in possession of not more than 10 grams of cannabis or are in possession of a smoking implement containing traces of cannabis. They will not be eligible for a cannabis intervention requirement if they have been cultivating cannabis plants, are in possession of plants, or are in possession of cannabis resin or other derivatives. Juvenile offenders will be eligible for a cannabis intervention requirement on two separate occasions before they are prosecuted for any subsequent offence. Adults will have only one opportunity to be given one cannabis intervention requirement.

An offender given a cannabis intervention requirement is to attend and complete a cannabis intervention session within 28 days. This session differs significantly from the education session that is currently available under a cannabis infringement notice scheme in that it will be therapeutic in nature, rather than a group educational session. It is worth noting that in 2009 fewer than five per cent of offenders who are given a cannabis infringement notice opt to attend the education session. Most offenders opt to pay the modified penalty attached to the cannabis infringement notice. The ability to pay a modified penalty will not be available under the new cannabis intervention requirement scheme. An offender who fails to attend and complete the cannabis intervention session will be prosecuted by police for the original offence. Given the nature of the cannabis intervention session and the fact that the alternative is prosecution through the court, it is anticipated that a significant proportion of offenders will attend and complete this requirement.

It is acknowledged that juveniles present a unique situation in relation to low-end possession of cannabis and in that regard juveniles cannot currently be given a cannabis infringement notice. Under the Misuse of Drugs Act juveniles will be able to be given a cannabis intervention requirement. Aside from the provisions I pointed out earlier in relation to juveniles, part 3 of the bill also contains some other provisions unique to juveniles. A police officer who issues a juvenile with a cannabis intervention requirement must give a copy of the cannabis intervention requirement to a responsible adult as soon as practicable unless the whereabouts of a responsible adult cannot be ascertained or it would be inappropriate to give a responsible adult a copy of the cannabis intervention requirement. Also, the bill provides for juveniles who would otherwise be eligible to be given a

cannabis intervention requirement but cannot because of their previous convictions and cannabis intervention requirements or juveniles who have not attended the required cannabis intervention session. It is desirable to have both those categories of juveniles considered by a juvenile justice team under the Young Offenders Act when appropriate, rather than having them charged and appearing in court. Proposed section 8G of the Misuse of Drugs Act seeks to achieve this.

Part 3 of the bill also contains a range of ancillary matters necessary to give effect to the new cannabis intervention requirement scheme. These ancillary provisions include powers to withdraw a cannabis intervention requirement, extension of time in which to complete the cannabis intervention session, appointment of treatment providers to deliver the cannabis intervention sessions and the issuing of completion certificates for the cannabis intervention session. It is worth noting that, as with other infringement-type schemes in operation, the offender will retain the right to have the matters dealt with in court instead of attending the cannabis intervention session.

The bill also proposes to insert a new section 19A into the Misuse of Drugs Act to create offences of selling or displaying for sale et cetera cannabis smoking paraphernalia. This new offence is modelled on the offence contained in section 24 of the Cannabis Control Act 2003, but sale is now prohibited across the board, and not just in relation to young people. The proposed penalty for sale to a young person is \$10 000, which is double the penalty under the Cannabis Control Act 2003.

Part 3 of the bill also proposes to insert a new part VII into the Misuse of Drugs Act to deal with a range of transitional provisions arising out of amendments contained in the bill and the repeal of the Cannabis Control Act 2003. Division 1 of proposed part VII of the Misuse of Drugs Act provides that the transitional provisions contained in that proposed part do not limit the general provisions concerning the repeal of written laws contained in part V of the Interpretation Act. This division also enables regulations to be made for dealing with any issue or matter of a savings or a transitional nature arising out of amendments made to the Misuse of Drugs Act for which there are not sufficient provisions in the actual act or amendment act. This is a safeguard inclusion that is increasingly being inserted into amending legislation to allow for regulations to be made to overcome any unforeseen consequence arising from amending legislation. The regulations can provide, if necessary, that certain provisions of the Misuse of Drugs Act do not apply in certain cases or apply with any relevant modification contained in the regulations. These regulations can be made to apply retrospectively, but if they do, they cannot do so to prejudice the rights of any person that existed before the regulations came into effect or impose any liability on any person in respect of anything done or omitted before the regulations came into effect.

Division 2 of proposed part VII of the Misuse of Drugs Act contains other transitional provisions; namely, notwithstanding that the Cannabis Control Act is being repealed, that act and the Fines, Penalties and Infringement Notices Enforcement Act still apply to the enforcement of a cannabis infringement notice, subject to the provisions of proposed new section 47 of the Misuse of Drugs Act. Proposed new section 47 provides that if a cannabis infringement notice has resulted in a licence suspension order issued under the Fines, Penalties and Infringement Notices Enforcement Act 1994, the modified penalty under the cannabis infringement notice is deemed paid on the commencement of the Cannabis Law Reform Act 2009 or 12 months after the licence suspension order was made. This is so that WA Police can dispose of the cannabis that had been seized when the cannabis infringement notice was issued. At present, WA Police is holding hundreds of seized cannabis materials while awaiting the completion of payment of cannabis infringement notices. Until this occurs, a person can still elect to have the matter dealt with in court, which could be years after the alleged offence was committed. WA Police does not propose to prosecute in these cases but, until the modified penalty is paid, WA Police cannot dispose of the seized cannabis. The provision in proposed section 47 will effectively deem the modified penalty to be paid after 12 months so as to enable WA Police to dispose of the seized cannabis.

Part 4 of the Cannabis Law Reform Bill 2009 contains an amendment to section 11 of the Spent Convictions Act. Section 11 of the Spent Convictions Act provides that the period of time a person must wait before a conviction can be spent, or before that person can apply to have a conviction spent, is 10 years. It is proposed to amend section 11 of the Spent Convictions Act to provide that if the offence was an offence under section 5(1)(d)(i) of the Misuse of Drugs Act—that is, possession of smoking implement containing traces of a prohibited drug, namely, cannabis; or an offence under section 6(2) of the Misuse of Drugs Act—that is, use or possession of a prohibited drug, namely, cannabis—but does not involve cultivated cannabis plants, cannabis resin or any other cannabis derivative, the time period is three years instead of 10 years. This change in qualifying period is not retrospective and will apply only to convictions imposed after the Cannabis Law Reform Bill 2009 comes into effect.

Finally, part 5 of the Cannabis Law Reform Bill 2009 contains some consequential amendments to the Young Offenders Act that are necessary to give effect to the new cannabis intervention requirement scheme. Firstly, section 25 of the Young Offenders Act deals with the referral of matters to a juvenile justice team. Section 25(3) of that act provides that if it is appropriate to give an infringement notice for an offence, it should be given in

preference to referring the matter to a juvenile justice team. The definition of “infringement notice” in section 25(3) of the Young Offenders Act will be expanded so as to also refer to a cannabis intervention requirement so that preference is given to issuing a cannabis intervention requirement to a young person rather than referring that young person to a juvenile justice team in the first instance. Secondly, section 29 of the Young Offenders Act 1994 provides that the discretion to refer a young person to a juvenile justice team is to be exercised in favour of first offenders. Section 29(2) of that act further provides that if a young person has been cautioned et cetera under the Young Offenders Act, that young person is still deemed to be a first offender for the purpose of referral to a juvenile justice team. Section 29(2) of the Young Offenders Act is to be amended so that if a young person has been previously given a cannabis intervention requirement under the Misuse of Drugs Act, or other infringement notices under other laws, that young person is still deemed to be a first offender for the purposes of section 29 of the Young Offenders Act.

I commend the bill to the house.

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