

MISUSE OF DRUGS AMENDMENT BILL 2011

Second Reading

Resumed from 18 August.

MS M.M. QUIRK (Girrawheen) [12.09 pm]: The Misuse of Drugs Amendment Bill 2011 is said to fulfil the Liberal Party election commitment to introduce laws to toughen the penalties for the sale of drugs to children and to prohibit the sale of drug-related paraphernalia by providing differential penalties for the sale of such paraphernalia to children and adults. In addition, this bill most significantly makes provision for increased penalties, and, in some cases, the imposition of a mandatory sentence of imprisonment, for the exposure of children to drug manufacturing.

Before discussing some more general issues, I will talk about the scheme of the legislation. First, proposed section 7B will create offences in relation to the sale of drug paraphernalia. Display of such items for sale will attract a fine of \$10 000, while the sale to an adult will attract a penalty of \$10 000 and sale to a child attracts a fine of \$24 000, two years' imprisonment or both. A defence will be created for a person authorised to sell drug-related paraphernalia in circumstances prescribed by way of regulation; however, I have some problems with the proclamation of these provisions, because it seems that in this legislation we are passing a section that permits exemption without contemplating those exemptions. I can readily think of at least three examples for which I think an exemption is needed. I suggest that the government defer proclamation of this proposed section until such time as the regulations are in force. As I said, I can think of three particular circumstances that fall within the definition of drug paraphernalia that should be exempted. The first of these is hookahs. Hookahs are quite often used for smoking tobacco rather than illicit drugs. In many cultures, a hookah is used in contexts that should not be subject to regulations or laws. Therefore, I think hookahs should be part of any exemption. The other two areas of activity that may cause some problems, unless an exemption is granted, include the so-called Fitpacks. A chemist should be able to sell a Fitpack without falling foul of the law. And of course, the activities of needle exchanges may also need to be exempted from this proposed section. People who work to ultimately prevent the spread of AIDS, hepatitis or similar serious diseases should not find themselves in jeopardy under the law. 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.

Also, in this proposed section, if detectable traces of a prohibited drug are found on such paraphernalia, a simple offence is created with a fine of \$36 000 or three years' imprisonment applying. This replaces the existing provision, which relates only to smoking implements and not to other kinds of paraphernalia.

As I said earlier, the second part of this legislation deals with the sale of drugs to children, and proposed section 34(3) makes it an offence to sell or supply a prohibited drug to a child. On a first offence, the court is required to impose a term of imprisonment, suspended imprisonment or conditional suspended imprisonment. For a second or subsequent offence, the court will be required to impose a term of imprisonment of at least six months. I will shortly talk more generally about the opposition views on the imposition of mandatory imprisonment, because those views apply to other provisions in the legislation.

The third area dealt with in this legislation is the exposure of children to drug manufacture or cultivation. The bill provides that when a person manufactures or cultivates a plant or possesses a quantity of precursors and in doing so endangers the life of a child, on a first offence the court must impose a term of imprisonment, suspended imprisonment or conditional suspended imprisonment. For a second or subsequent offence, the court will be required to impose a term of imprisonment of at least six months. The bill provides that when actual bodily harm is caused to the child, a mandatory term of imprisonment will apply—namely, 12 months. It should be stressed that this relates to drug manufacture not only in premises, but also in cars. Most significantly, and we take issue with the government on this, it applies also to plant cultivation. Given the scheme of the legislation, it appears that there is potential for injustice. I also think that the application to plant cultivation is arbitrary and not consistent with any evidence that we need to legislate in this area to deter conduct. Given that and given the scenarios that the opposition will canvass with the minister in consideration in detail, the range of culpability can vary quite substantially, and, accordingly, this is where Labor takes issue with the mandatory sentencing provisions.

The third issue is the dichotomy between endangering a child and “actual bodily harm”. Although the term “actual bodily harm” is defined in the Criminal Code, and its meaning is accepted and known generally, in some situations—for example, clandestine labs—there will be a blurring between whether a child is in danger or whether actual bodily harm occurs. In particular, we contemplate a young child who might be exposed to toxic fumes and who may suffer some form of brain damage, which may not be known at the time charges are laid. It may well become apparent only years later. In our view, it would be a more elegant piece of drafting if the mere presence of a child in a clandestine lab was enough to attract the penalty and that there was no divide between

endangering a child and the actual causing of bodily harm. That is simply another element of the offence that the prosecution has to prove. As I have stated, it will be, in some cases, debatable whether the prosecution will be in a position to prove that actual bodily harm has occurred but that it is of a nature that is not readily apparent.

I have previously talked about the great opprobrium in the community for dealers or drug manufacturers who have kids on the premises and why that is the case. I want to reiterate some of the comments I made earlier. Children are found in about 30 per cent of clandestine labs and we would say that is 30 per cent too many. I do not know because I have not checked in a couple of days, but the last time I looked more than 133 clandestine drug labs had been found. Is the minister able to enlighten us, as of today, about the number of clan labs that have been found this year in Western Australia?

Mr R.F. Johnson: I have asked for that information.

Ms M.M. QUIRK: He has asked for that information.

Mr R.F. Johnson: Yes; I will be able to give you the most up-to-date information, hopefully, in my response.

Ms M.M. QUIRK: Thank you very much.

Mr J.M. Francis: I will get you that if you give me one second.

Ms M.M. QUIRK: Thank you very much, member for Jandakot. It is very handy to have someone who is a “twit” in the chamber.

Ms R. Saffioti interjected.

Ms M.M. QUIRK: Yes. However, in excess of 133 clan labs have been discovered this year, which is in fact equal to the total number found last year. I have said on previous occasions and in other places that the clandestine lab activity is escalating; it has almost increased threefold in the same number of years. It is a major concern that needs to be addressed. The fact that in 30 per cent of cases children are found is totally unacceptable to not only the opposition, but also the community. Certainly police have been militating for some years for a legislative provision. During the debate on the Misuse of Drugs Amendment Bill 2010 on 7 September 2010 I quoted Detective Inspector Alan Morton who said —

Of serious concern to us is the fact that in some of these houses we find children living in the same rooms as the clandestine drug labs and the associated chemicals.

Mr R.F. Johnson: There are 142 labs.

Ms M.M. QUIRK: There are 142; goodness me!

Mr J.M. Francis: There are 142; PerthNow tweeted it this morning.

Mr R.F. Johnson: There are 142.

Ms M.M. QUIRK: Thank you very much, minister. Detective Inspector Alan Morton continued —

In one instance we found chemicals being stored above a child’s cot. It is a great concern that some parents have a total disregard to the dangers they expose their children to, in their pursuit of illicit drugs.

The United States Department of Justice has outlined some of the issues of concern to children and they are extensive. It has produced an excellent report titled “Children at Clandestine Methamphetamine Labs: Helping Meth’s Youngest Victims”. That report states in part —

Children who live at or visit these sites or are present during drug production face acute health and safety risks, including physical, emotional, and sexual abuse and medical neglect. The manufacture of methamphetamine may involve hazards such as fires and explosions. The age-related behaviours of young children (such as frequent hand-to-mouth contact and physical contact with their environment) increase the likelihood that they will inhale, absorb, or ingest toxic chemicals, drugs, or contaminated food. Their physiological characteristics (such as higher metabolic and respiratory rates and a developing central nervous system) leave them particularly vulnerable to the effects of toxic chemical exposures. Exposure to drugs and alcohol before birth places infants at increased risk for neurological abnormalities and respiratory problems, which may be compounded by ongoing environmental exposures.

It goes on to say —

A child living at a clandestine methamphetamine laboratory is exposed to immediate dangers and to the ongoing effects of chemical contamination.

...

The chemicals used to cook meth and the toxic compounds and byproducts resulting from its manufacture produce toxic fumes, vapors, and spills. A child living at a meth lab may inhale or swallow toxic substances or inhale the secondhand smoke of adults who are using meth; receive an injection or an accidental skin prick from discarded needles or other drug paraphernalia; absorb methamphetamine and other toxic substances through the skin following contact with contaminated surfaces, clothing, or food; or become ill after directly ingesting chemicals or an intermediate product. Exposure to low levels of some meth ingredients may produce headache, nausea, dizziness, and fatigue; exposure to high levels can produce shortness of breath, coughing, chest pain, dizziness, lack of coordination, eye and tissue irritation, chemical burns ... and death.

This is a matter that we treat very seriously and I think there is also the collateral problem that I need to mention, which is that because parents are so focused on producing these drugs, their children suffer general neglect and have no prospect of flourishing or sometimes even surviving under these conditions. The same report goes on to state —

The inability of meth-dependent and meth-manufacturing parents to function as competent caregivers increases the likelihood that a child will be accidentally injured or will ingest drugs and poisonous substances. ...

Children developing within the chaos, neglect, and violence of a clandestine methamphetamine laboratory environment experience stress and trauma that significantly affect their overall safety and health, including their behavioural, emotional, and cognitive functioning ... Without effective intervention, many will imitate their parents and caretakers when they themselves become adults, engaging in criminal or violent behaviour, inappropriate conduct, and alcohol and drug abuse.

Those passages illustrate some of our concerns, which are that some of these effects are long term, some are short term, some are physical and some are psychological. Some of those effects will be latent and some will be obvious immediately. The way the legislation has been structured around endangered or actual bodily harm means that the police will have to prove some of these medical elements. We think that it may well have been better to draft the legislation in terms of the mere presence of a child at that site rather than having to create this extra element of an offence.

Another issue we are very concerned about is that the legislation, as I understand it, includes the cultivation of plants and kids being exposed to the cultivation of a plant—I say it in the singular. I have thought of one scenario in which one marijuana plant is being grown at a house and a young child who is crawling around on the ground knocks over the pot plant, thereby grazing or hurting himself in some minor way. That is a world away from having a child in a clandestine laboratory where toxic fumes are being emitted. It is worlds apart. As I understand from a briefing with police, this is not something that they initially recommended and it is not something that I think we need to address in Parliament. There are not endemic problems in this regard as far as I am concerned and I think it should be distinguished from those examples that we have talked about—the 144 clan labs, 30 per cent of which have had kids present. We are dealing with something that, frankly, does not need to be dealt with at the moment. It makes things confusing. I think the mandatory sentencing regime has a major potential to cause injustice. Our amendments to the legislation certainly address that issue and they remove the distinction between actual bodily harm and endangering the child, as well as delete the clause that deals with the cultivation of plants.

The final thing I want to talk about is mandatory sentencing. As I think the Commissioner of Police would say himself, the majority of these cases do not involve high-level organised criminals; they involve addicts who manufacture these drugs in a desperate attempt to obtain them for their own usage, unlike those people who are cashed-up and buy the purer amphetamine that is sent to Western Australia in increasing volumes from organised criminals in the eastern states. Therefore, we have a cohort of addicts who cannot afford to support their addiction other than by manufacturing the drugs themselves. As I said earlier, the profile of such people tends to be that they neglect their children, and that is why such a large number of children are present at clan labs. These people, who frankly cannot help themselves, face the prospect of imprisonment when addiction counselling and/or some parenting counselling might be preferable.

Mr R.F. Johnson: Member, can I just clarify something? You said 144 labs. That is not what I said. I said 142.

Ms M.M. QUIRK: Sorry; 142. Thank you very much, minister.

In our amendments, we have left in conditional imprisonment and suspended imprisonment for all tiers of offences. That means that the courts will have the discretion to say that, in cases in which the parent is the carer of the child, the best outcome for the child is that the parent is not imprisoned but attends addiction counselling or parenting counselling, or whatever. We have done that because we believe that, now that the minister has widened the net to include plant cultivation, it is not appropriate in all circumstances, given the profile of the

offenders, to imprison the offender, because the person we will be hurting is the child. So, yes, we believe it is important to send a signal. Yes, we believe this is a case in which a fine per se is not important. But the way this legislation is structured, we do not believe it will act as an effective deterrent.

When we advocated and lobbied the government to act decisively on this issue—some time ago now—we had contemplated that a circumstance of aggravation would be inserted into the Misuse of Drugs Act, so that one penalty would apply, but the courts would take into account the presence of a child, and that, as a circumstance of aggravation, would have the effect of increasing the penalty. In that regard, I think that quite a high proportion of these offenders are now not going to prison. I think it is as high as 40 per cent. The minister might be able to provide the figures. I meant to ask the minister's advisers the other day. I would like some advice, when the minister responds, as to how many people who were arrested for manufacturing drugs in clandestine drug labs in Western Australia last year were in fact imprisoned. There was the very high profile case of the police commissioner's son, but I think that is the exception rather than the rule.

Another way that I think this particular conduct that we want to prevent could have been handled is by an amendment to the Children and Community Services Act. I have referred to that act on a previous occasion. Section 101 of that act states —

- (1) A person who has the care or control of a child and engages in conduct —
 - (a) knowing that the conduct may result in the child suffering harm as a result of any one or more of the following —
 - (i) physical abuse;
 - (ii) sexual abuse;
 - (iii) emotional abuse;
 - (iv) psychological abuse; or
 - (v) neglect as defined in section 28(1);or
 - (b) reckless as to whether the conduct may have that result,is guilty of a crime, and is liable to imprisonment for 10 years.

We believe that section also needs to be amended, because it relates only to someone who has care or control of a child, and that may need to be broadened. We believe that would better reflect the nature of the conduct that we are dealing with here and how that should be controlled.

Those are the preliminary remarks that I want to make. As I said, during the consideration in detail stage we will address a number of the issues that I have highlighted. But we do intend to vote against those clauses of the bill that deal with mandatory imprisonment. We do intend to move amendments on those particular provisions. We do think that reference to the cultivation of plants simply blunts this legislation, and I think it loses focus. It is very arbitrary. This is not conduct that we believe is so prevalent that it needs a legislative response at this stage. We say that there is some blurring between the provisions relating to endangerment of a child and the actual causing of bodily harm.

Dr J.M. Woollard: Member for Girrawheen, with the Children and Community Services Act, the section that you just read out, what is it that you believe needs to be done?

Ms M.M. QUIRK: There is an issue, member for Alfred Cove, as to those cases in which the child is not under either the care or control of an adult, but may be at the premises. My advice was that there may be circumstances in which a child is gratuitously on the site but is not under the care or control of the person on the site manufacturing the drugs. We believe this section could be amended to change that in some ways. This bill is purportedly about the welfare of children. But that may well have been more properly inserted in that piece of legislation.

As I was saying, I think the distinction between endangering a child and causing a child bodily harm is a little blurred in the context of latent injuries that might not be readily apparent, and of course psychological injury as well.

Finally, we will be seeking a commitment from the government in relation to the proclamation of those sections of the bill that deal with exemptions to the sale of drug paraphernalia. We believe there are a number of circumstances—they are not isolated—that might expose people who are engaged in legitimate activities, such as needle exchange, or the sale of Fitpacks, or are of a culture that uses hookahs with tobacco, so we believe all those exemptions should be in place at the time these sections are proclaimed.

MR D.A. TEMPLEMAN (Mandurah) [12.38 pm]: I want to make a brief contribution to the debate on the Misuse of Drugs Amendment Bill 2011. This is an important bill that will be debated today at the second reading stage and in the consideration in detail phase. I listened closely to the comments of the member for Girrawheen, the opposition spokesperson, with regard to this bill. It is important to put on the record that, like all members I am sure in this place, we are abhorred by the rapid growth that we have seen in the last few years in the number of clandestine drug laboratories to which the general public have been exposed. There have been some very high profile examples of these clandestine drug laboratories. As has been reported, many of these laboratories have been exposed and raided by the police, and people have been taken into custody. But, tragically, a number of children have been present in some of these houses that people have been using as clandestine drug laboratories. Certainly in my electorate, a number of these clandestine laboratories have been raided and people taken into custody. All of us are very concerned to learn that up to 30 per cent of these laboratories have had children living in them, or present in them, when they have been discovered.

One of the things that I am particularly concerned about—this actually does go to the issue of police resourcing—is ensuring that we are confident that all the information that is provided by the general public is acted upon as soon as is humanly possible. I know a lot of people in our communities—mine is no different—watch the goings on in their neighbourhood, and report what they believe are suspicious activities that could lead to a particular property being identified as a place where illegal drug use is taking place or the illegal manufacturing of drugs is taking place. In fact only last year, not far from where I live in Mandurah, the SWAT team, I think they call it—what do they call it?

Mr P. Papalia: Tactical response group.

Mr D.A. TEMPLEMAN: The TRG surrounded a house, and there was quite a major uncovering of a particular drug activity not far from where I live. So, it is always a concern for people in the community that they can have confidence that the resourcing of the police service goes hand in hand with new or amending legislation that is introduced. I think the current figure is that 142 clandestine drug labs have been found in the last two years.

Mr R.F. Johnson: As at today—no; that is this year.

Mr D.A. TEMPLEMAN: This year? That is a very significant number—almost one every second day, I think, so far this year.

Of course, that many being uncovered means that reports are being responded to and good police work is being done to cover and act, which is great. I commend the men and women of our police service who are responding to this. But if this trend continues, it seems that there is the potential for these clandestine laboratories to already be in existence in neighbourhoods throughout Western Australia. It means that neighbourhood people need to be very vigilant and report activity they notice to the police service and Crimestoppers et cetera. Again, as long as the police service is resourced appropriately to respond to those reports, this phenomenon of the manufacture of illegal drugs in residential and industrial areas will be uncovered and acted upon as soon as possible.

I am interested in the clauses in the Misuse of Drugs Amendment Bill 2011 that relate to the penalties to be imposed on people who are guardians and/or parents of children under the age of 16, I think is the determination.

Mr R.F. Johnson: I think it is anybody who puts children in harm.

Mr D.A. TEMPLEMAN: Okay; that is important. Penalties need to be in place for anyone who places a child in harm's way with regard to the manufacture or cultivation of drugs; that needs to be of paramount importance.

I think it is really important now, more than ever, that all elements of the community become vigilant. We know that a number of these clandestine laboratories have been operating out of public housing, and there has been a reaction to that. But I think we also need to reinforce the importance of intelligence and actions from agencies that manage or oversee rental properties. Clearly, some of these properties where these clandestine laboratories are operating are in fact rental properties that are, by law and by tenancy agreements, supposed to be inspected by the relevant agent on behalf of the property owner. I think that as part of a response to this phenomenon, estate agents, or other agents who act on behalf of landlords, perhaps need to be one of the key stakeholders in consultation with regard to the thrust of this bill.

I will be listening very carefully to the consideration in detail of this bill, because I think it is actually a very important bill and that it is and should be of interest to all of us in this place. I do not think there would be any electorate that potentially does not have people operating illegal operations such as the one that this bill is attempting to target. It is for all of us as community leaders to be vigilant ourselves, as I am sure many members are, because this is a serious issue. If children, in particular, are involved, or are potential victims of the impacts of these particular operations, then that should be of paramount importance and priority for all of us.

DR J.M. WOOLLARD (Alfred Cove) [12.45 pm]: I am very pleased that the Misuse of Drugs Amendment Bill 2011 is on the table to be debated in this house, because we have seen an increase in the number of backyard

laboratories, and we need to deter people from establishing them. The member for Girrawheen listed some of the toxic chemicals that are found in these so-called laboratories where people are making illicit drugs. Unfortunately, a lot of people do not realise how dangerous those chemicals can be. I think one of reasons they do not realise is that they can walk into the shops and just pick them up off the shelves. A lot of chemicals used in these laboratories are readily available. Also, people do not need scientific kits; they are making these drugs in buckets and cans, and it is all cobbled together. I am hoping that the minister's response to the second reading debate will inform the house of, in particular, the range of over-the-counter medications that are, or could be, used in the manufacture of illicit drugs, because I think we need to know. Many of us have seen it reported in the newspapers that Codral is being used because it has —

Ms M.M. Quirk: Pseudoephedrine.

Dr J.M. WOOLLARD: I was just trying to see how much it has in it; I think it is 30 milligrams. Yes, pseudoephedrine hydrochloride, 30 milligrams for the day and night cold and flu preparation; also, Sudafed has 30 milligrams of pseudoephedrine hydrochloride in it. The Misuse of Drugs Act mentions ephedrine, but not pseudoephedrine. We have heard that some pharmacies do not stock these medications now because there have been so many break-ins by people particularly targeting these drugs. These people use over-the-counter medication, and some of the other things they use are readily available. As reported in *The West Australian*, the chief executive of the Australian Crime Commission, John Lawler, stated that, "WA drug cooks used highly volatile chemicals, including LPG and ammonia gases", and that these are, "toxic, corrosive, explosive and carcinogenic and pose a significant risk to the community." I know people have approached the minister in relation to the ingredients that are being used in these labs and how the government can try to put a restriction on the easy access to some of those substances so that people have to think twice. When the police find these clandestine laboratories, does the forensics team go in there? The minister has said that so far this year the police have managed to close down 142 laboratories.

Debate interrupted, pursuant to standing orders.

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