

MISUSE OF DRUGS AMENDMENT BILL 2021

Second Reading

Resumed from 3 June 2021.

HON SOPHIA MOERMOND (South West) [10.07 am]: I rise to speak in support of the Misuse of Drugs Amendment Bill 2021. To lead the continuation of the debate on this bill, I will remind the house of the context. Currently, police can use schedule 7 or 8 of the Misuse of Drugs Act when assessing whether a cannabis grower is to be accused of drug trafficking. Schedule 7 refers to a weight of three kilograms and schedule 8 refers to 20 plants. The police get to choose which schedule they wish to use. It does not matter the size of the plants as such. If there are 20 seedlings, they can choose to set that up as for trafficking, and three kilograms can also include the soil that is still stuck to the roots, so it is not actual plant material. Anything over those limits may be deemed a trafficable quantity by the police. Currently, if the Director of Public Prosecutions insists on asking for a drug trafficker declaration, the court has no option other than to hand down such a declaration, regardless of the circumstances. No judicial discretion exists concerning a drug trafficker declaration; rather, the court is obliged under a law passed in a previous Parliament to do so, even if it is plain to the judge that no trafficking has taken place.

A review of the Criminal Property Confiscation Act led by Hon Wayne Martin recommended that the courts be given the discretion to decline to declare a person to be a drug trafficker if satisfied on the balance of probabilities that the person has not engaged in trafficking. The motion put forward by Hon Dr Brian Walker was that the Misuse of Drugs Act be amended to reflect recommendation 9 of the Martin review. I strongly support the motion due to the fact that there is a lot of evidence to suggest that many trafficking convictions are dispensed by the courts to people who are growing but not trafficking cannabis.

As for the amounts of plants people may have been found with, we are looking at people who are growing cannabis for their own use. Recreational use can be one component, but it is often people who are treating their own cancer. A lovely lady from Mt Barker was caught with plants and processing equipment and she was definitely not trafficking. All she did was grow the plants to manage her own cancer diagnosis and she has lived way past her use-by date.

Based on the current practice of police, it appears that anything over the limits of the three kilograms with the soil attached to the roots as well as having over 20 seedlings—which may be very low weight—will be deemed a trafficking offence. Secondly, it seems that the current practice of the police is to measure the weight of the plants in such a way that increases their weight. As I said, they weigh it with the soil attached. If someone has just watered their plants, it will also include the weight of the water as well. Thirdly, judges have openly stated that due to this clause, they have convicted people of being drug traffickers when they did not believe that they were.

Patten and Anor v the State of Western Australia was a case that came before District Court Judge McCain in 2013. It led Judge McCain to openly say in court that he was being asked to make an unjust finding and that there was no justice in our current system of confiscation. Legal experts such as Malcolm McCusker, KC, and Tom Percy, KC, also tell us that those injustices occur on a regular basis. A person should not be classified as a drug trafficker and should not have their assets confiscated unless they can actually be shown to have been trafficking. Another example of that may be the seizure of assets when a drug dealer or grower lives in a house, possibly with his family, and gets busted for a certain amount of cannabis. The whole family may lose their house. That could include mum and children. By the way, that is a fairly common family arrangement.

For this reason, I support this minor amendment to the act. The Misuse of Drugs Amendment Bill 2021 would put a stop to the situation whereby in circumstances where contraband material is over a certain weight or volume, judges are forced to make the drug trafficking declaration although there is no evidence of commerciality. This would be through one simple amendment—inserting a subsection to allow a judge to decline to issue a drug trafficking declaration in situations in which they are satisfied that doing so would be unjust.

Judges no doubt do not have an easy job at all; their job is to enact justice. They need to be provided the tools to do so. If a law is unfair to either the person who has been caught with the material or the people or family who might be living in the house, then that may not be an entirely fair judgement for the judge to give. They are highly qualified people and I feel that we should be able to trust their judgement in enacting justice. The submissions to, and the conclusions of, the Martin review showed that our judges and lawyers recommend this. The whole point of the justice system is to enact justice. Many more issues within the current act need to be amended, but this is one simple option that could be easily addressed to make the law a lot fairer.

I have a specific case study as well. In 2016, Kenneth Williams was paying off the house that he had bought 21 years previously. He was growing five plants to make cannabis butter to manage side effects of medication he was taking to treat hepatitis C. It was the only thing he found that helped with his nausea and loss of appetite, among other symptoms. He also had eight small cuttings to pay back the grower who lent him the growing equipment. He

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admitted to police that he had grown cannabis in his shed, which led him to be convicted of cultivation of a prohibited plant with intent to sell or supply. His house payments were frozen for six years and the house was ultimately confiscated by the Director of Public Prosecutions. Mr Williams lived on the pension and had \$600 a week and only \$30 000 in his super. His house was his super, but he then lost it due to an outdated law. I do not think that was particularly fair. Do I believe the people who traffic drugs or sell drugs illegally should be punished under the law? Absolutely.

Those growing cannabis for their own use most commonly include cancer patients and chronic pain patients. In particular, cancer patients need to grow quite a bit to treat their cancer. I know that treating cancer with cannabis is not particularly mainstream yet, but we are seeing a lot more research coming out on that. We have a lot of anecdotal examples of people treating themselves and having some really good results. Another thing that we see is that a family in a domestic violence situation living with a grower or dealer may not have any say over whether plants are to be grown on the property or whether dealing should take place. That family requires protection as well and they certainly should not lose their house simply because someone in the household is participating in illegal activities.

HON LORNA HARPER (East Metropolitan) [10.17 am]: I rise today to speak on the Misuse of Drugs Amendment Bill 2021. As members might understand, I will not be agreeing. I listened very carefully to what Hon Sophia Moermond said. It is very disheartening to hear stories about people with cancer who have been accessing cannabis to ease their symptoms. However, I then wonder about the 20 plants. It is not the biggest amount in the world, but irrespective of what stage the plants may be at, 20 is a significant amount. Someone would need quite a bit of space and water to grow 20 plants. If they had a hydroponic system set up, they would need quite an extensive set-up. That is why the law is the way it is. It brought synthetic cannabinoids in and then it brought hydroponics in. The law changed to meet those needs.

I know that the Legalise Cannabis WA Party talks about cannabis as though it is a soft drug and cure-all. I have to say that before I was on the Select Committee into Cannabis and Hemp, I was one of those people who thought “What is the problem?” However, I then went on the select committee and learned so much more and am now firmly opposed to it, instead of thinking that cannabis is the be-all and end-all of everything. That is my personal opinion. It changed because I gained a lot more knowledge. Some of the knowledge that I gained from being on the committee amazed me.

We travelled to Queensland to go to a symposium. People were going on about the benefits of medicinal cannabis. However, I found people there who were trying to sell the vape system; it looked like a bong. It was a vape system that could be used to take medicinal cannabis. All sorts of things were being sold there. People there were rallying against laws throughout all Australia, but I did not actually learn anything new from that symposium. In fact, I was actually very disappointed. That may have been the fact that I had just come out of having COVID and I had to watch some of it from my room. I was not infectious at the time; I had tested negative several times, but I found it difficult to feel anything that came out of that symposium. The biggest news I got that weekend was that Labor won the federal election. I think that was the weekend—yes it was. We won the federal election and there were resounding victories in Western Australia. I celebrated with my colleagues Hon Jackie Jarvis and Hon Matthew Swinbourn, much to his horror at having to be stuck in a room with Hon Jackie Jarvis and me because, apparently, we were not very quiet. We were very disappointed with the symposium.

It was more interesting when we went on our trips to the south west where we met with hemp growers and the companies growing medicinal cannabis. I was very, very impressed by what I saw with the growing and cultivating of medicinal cannabis. I was very impressed with the set-up, the quality frameworks, the sterile conditions and how cannabis was grown. I have to tell members that the smell was extremely overpowering. It made my eyes water. No, we could not get high from the smell. We were masked up and gowned up. In fact, we looked like oompa-loompas from *Charlie and the Chocolate Factory* because we were all gowned up with glasses, masks, gloves and bootees—the works. We were really going in and looking at the process. They talked about the purity of the cannabis that they were growing for medicinal use. It was brilliant. That was one of the things that changed my mind.

Another thing that changed my mind was the committee’s overseas trip. It is in the report. We visited Prague. Before I went, I was told that cannabis is available in vending machines in Prague. No, it is not. What they call “hemp” is found in food like chocolate bars. In fact, we bought what looked like coconut roughs. Before we ate them, we read the ingredients list just to make sure that were not going to do something illegal. It said that the bar contained chocolate with hemp. The illusion that cannabis is available all across the world and that it is easy to get quality cannabis is really a misnomer. People in Prague were openly smoking it, but not as much as the people we saw in Frankfurt and Berlin when we visited Germany. In Berlin, we met with people high up in the government who talked about the issues they had with people growing cannabis illegally. There is a huge difference between somebody illegally growing two or three cannabis plants in their house for personal use and somebody growing three kilograms of cannabis or 20 plants et cetera. There is a difference. I understand that the member might be sad about the fact that someone could potentially lose their house et cetera, but I asked myself a question: if I had a little hydroponic

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thing going in my garage—by the way, I do not. If I were growing cannabis, I think that other people in the house would realise that, and I would have to weigh up the risks versus the rewards of doing that. Could I lose my family's home or could I make lots of money? The risks and the rewards are there. It is very clear for people to see what the risks and what the rewards are. If I were that person, my family would be horrified that I may or may not be gambling with their lives and their home.

Another thing that I do not think Hon Sophia Moermond really highlighted is the fact that the prosecutor can make an application for a drug trafficking declaration—generally the Director of Public Prosecutions, so it is the prosecutor. It is not the police officer. As we know, the police make the arrest, they provide their evidence and the prosecutor makes the decision as to what charges will be laid. It is unfair to say that the police are making those decisions. It may be a police prosecutor, but it is the prosecutor who decides, but I digress from what I was thinking about on our trip through to the Continent—one would think I was still in Scotland. I mean Europe.

From there we went to—it is horrible to say—Israel. It was just over a year ago that we were in Israel. The industry there was a lot more fascinating when it came to medicinal cannabis, as evidenced by the fact that a person could go to a chemist and behind the counter were all these remedies for everything. A lot of men were explaining things to us while we were there and at one of those warehouses, one gentlemen kept holding up this pink packet. I asked him what it was for and he said, “It’s for women’s stuff.” I said, “Well, I’m a woman and I’ve got a lot of stuff, so you need to be more precise.” I had to ask him quite a few times. I knew what he meant, but it was amusing me that he could not actually say that it was for menopausal symptoms or for women who were menstruating. I asked how it is applied and found out it was a suppository to help with women’s period pain, but the man could not say that. It amused me no end, because it was me, but it said a lot about what was happening.

They also took us to their highly regulated growing areas. We had our shoes cleaned on a regular basis going in and out of different areas. We were again dressed liked oompa-loompas. People could tell it was me in the photos because I was the shortest person. We were taken around warehouses probably five times the size of this chamber that were full of cannabis plants in all stages of growth and production. We got to see up close and personal the oils coming off the cannabis plants. We got to smell them. We did not touch or taste them or do anything with them because that would have contaminated them. We learnt that Israel has a huge problem in people using illegal cannabis. I am not going to say marijuana because, as Hon Dr Brian Walker has already said in the past, marijuana is more of a name to make it sound terrible. We are talking about cannabis here. We are also talking about the misuse of drugs. Cannabis is only one drug. There are other drugs. What if we changed “cannabis” to “methamphetamine”? We would have a whole different conversation going on. People would no longer think of it as a soft and fluffy drug. People would start to think that it is very serious. I do not know the difference between ice and crack; nobody has ever explained it to me and I do not want to google it because it is not my thing. But we know there is a scourge of people who are addicted to methamphetamines—ice, crack, whatever you call it. I have met somebody who was unfortunately on crack and I was absolutely horrified as to what was happening to them. What if we then change the thought of the fluffy “it’s not so bad” cannabis and start to talk about cocaine or heroin?

I come from Scotland; I lived in Edinburgh in the 1980s. Quite a few members would have either read Irvine Welsh’s book *Trainspotting* or watched the film. I have to say, that was the cleaned-up version of what it was like in Edinburgh in the eighties because at that time Edinburgh was the heroin capital of Europe. I remember being in a nightclub—I will say it was a nightclub, but it was some dodgy place down the back in the old city. The bouncer knew us, because my friend’s brother was a bouncer, and he came and got us out. The police and ambulance were coming because a girl had overdosed on a table in the middle of the club. That is how bad it was. She did not OD on cannabis; she overdosed on heroin. However, let us take everything Hon Dr Brian Walker is saying about cannabis and put it towards heroin or cocaine. We know cocaine usage is rife, as is shown from wastewater testing. I have not seen cocaine. I have not known of anybody who used cocaine and I have not watched anybody have anything to do with cocaine. Maybe that is because I am working class from the west coast of Scotland and we were all too poor. Cocaine was a rich person’s drug—something that we did not see.

We could also say that we will change cannabis to synthetic cannabis. We all know what happened when synthetic cannabis came in in Western Australia. I believe some young people took it and unfortunately lost their lives. We have to be very careful when we talk about the misuse of drugs and cannabis. We try to pull at the heartstrings and we talk about people with cancer. I feel for those people and I understand that anecdotally it can help with nausea and pain and things like that, and that is great, but we have medicinal cannabis for that. Are there barriers? Yes, there are some and we are working through them, but medicinal cannabis is available for that. I understand that people might want to grow some plants. My opinion—it is not the official opinion—on two or three plants is, meh, you know. But 20 plants or three kilograms is something I would have to have a lot more thought about.

Listening to Hon Sophia Moermond, we are meant to believe that anybody who went through with 20 plants or three kilograms is automatically classed as a drug trafficker, but that is not true. It has to be applied for by the prosecutor. That is the way the law currently stands. It is a misrepresentation to say that they all go through. I do

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not know anybody who grows cannabis illegally. To my knowledge I do not know anybody who deals in crack cocaine or heroin. It is disingenuous and disheartening that people keep referring to cannabis as a soft and fluffy drug and that nobody is getting harmed or can be endangered by it in any way. We still have people on medicinal cannabis driving. The issues around medicinal cannabis and driving are discussed in a select committee report, but people high as a kite, completely stoned from smoking, are also driving. It is not the fluffy drug that people think it is. It is not the cure. It is not the end-all. We have to be very careful and think deeply and hard before we carry on with this legislation.

HON DR BRAD PETTITT (South Metropolitan) [10.34 am]: I am pleased to speak in support of the Misuse of Drugs Amendment Bill 2021. I thank Hon Dr Brian Walker, and also his colleague Hon Sophia Moermond, for bringing this on. This bill is beautiful in its simplicity. It could be the shortest amendment bill ever. It is so deeply sensible and logical that it is hard to argue against. I heard some of the commentary before. I could literally read the amendments several times in the time I have; it is quite simple. It is simply saying that the court is not required to declare a person to be a drug trafficker if the court is satisfied that it would be clearly unjust to do so. This is not a radical amendment. It is extremely straightforward and sensible, and the court must be required to give its decisions to do so.

I struggle to understand what the argument could be against such sensible and clear legislation. This amendment to the Misuse of Drugs Act 1981 would take out what I think is clearly identified as the unjust nature of the way the act currently works. This is a good, logical step in the right direction. If there were ever a simple amendment from the crossbench that should get up in this place, this should be right up there because it could be done simply and easily.

There has been broader debate—Hon Lorna Harper touched on it—around the nature of drugs and cannabis as part of that. I say in response to that that what is clear around this is that it is giving the courts the discretion to make that judgement—something that is extremely sensible. When that discretion is not given, a range of unjust consequences results. That does not help in any way.

I say “well done” to Hon Dr Brian Walker; this is a sensible bill. Obviously, the bill is so short that it would be impossible to use the hour to talk about it. Hon Lorna Harper went down the path of asking what this means for how we think about drugs, particularly cannabis. I want to reflect on that. Two of my colleagues on the crossbench have had a strong focus on cannabis. Even though my party, the Greens WA, shares those views, I have not had to focus on that because it has been competently dealt with in this place by my two colleagues. Recently the Greens national conference was held in Perth. David Shoebridge, a senator from New South Wales who has the carriage of this portfolio at a national level, came over for that. It was the first time I had had a chance to sit down and see what was happening nationally in this space. It is interesting to see what is happening because it supports very much what the Legalise Cannabis WA Party has been doing in this state, and the Greens’ position as well. A big survey was done on the legalisation of cannabis nationally. The federal Legalising Cannabis Bill 2023 was introduced in the Senate in August. When that bill was proposed and advertised, interestingly almost 9 000 submissions were received about it. That shows the passion and interest in this topic, not just here in WA but across the country. Not only were there almost 9 000 submissions, but 92.3 per cent of those submissions were in favour of the legislation, which is extraordinary. That bill will certainly do something that is related to the misuse of drugs legislation amendment before us and will try to create a national framework for how cannabis is legalised and ultimately the activities regulated, and create a cannabis national agency. It would be interesting to acknowledge that it is a bit like alcohol; it is a drug that we need to stop treating as a criminal drug and just treat as something that is very much part of our society and, quite frankly, less damaging than alcohol in most cases.

How do we then make it part of our economy? Interestingly, one of the things that stuck in my head was that \$28 billion would be returned to government coffers over the coming decade if such a bill were passed. It is a huge opportunity if we do this, rather than continually treating it as something criminal and basically pushing it into a black market, in which everybody is the loser.

I want to commend this bill. I think it proposes a very modest amendment, and I struggle to see what the argument against it could possibly be. In doing so, I want to acknowledge, of course, that there is a whole bunch more work to do, which we know that the Legalise Cannabis WA Party and the Greens are working on nationally. This is an opportunity to move on. Legalising cannabis is coming. Even if we cannot persuade our colleagues in government here, we hope to see some changes at a national level that will speed up this process.

HON STEPHEN PRATT (South Metropolitan) [10.41 am]: I would like to continue from where Hon Dr Brad Pettitt left off about the body of work that is associated with this issue. It is a really serious issue. As was outlined in the submissions made to the other bill the Legalise Cannabis WA Party has been developing, there is a lot of interest. I thank you for the opportunity to speak about this topic. I am not sure that I have had the chance to speak

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about cannabis and its use during my tenure in this place to date. I will take the opportunity to speak about a whole range of things to do with cannabis and the intent of the Misuse of Drugs Amendment Bill 2021.

Without identifying anyone, I want to let the house know that I have a personal experience with cannabis. I have seen firsthand the damage that the use and abuse of cannabis can have on someone's life. Although that obviously has an impact on me emotionally, it does not necessarily shape how I feel about how we should legislate in this place. I do not want members to take this as a signal that I am a hardline no on any pathway towards a different approach to these things, but I have seen the damage and long-lasting impact it can have on individuals and their families.

On that note, I want to talk about initiatives the government invests in through the Mental Health Commission and programs in our schools. I am aware of programs such as the Drug Aware program. I do not know whether it is still called SDERA, but there used to be the school drug education—something; I do not know what the rest of the acronym stands for anymore. These are really important initiatives because they go to early intervention and prevention, which I think is very important when we talk about the use of cannabis.

I note that Hon Dr Brian Walker has taken every opportunity on a number of occasions to speak about cannabis, as he and Hon Sophia Moermond should in their capacity as members of the Legalise Cannabis WA Party. I will paraphrase Hon Dr Brian Walker a bit—I might nail it, but we will see. Hon Dr Brian Walker has referred to cannabis as a healthy, healing herb.

Hon Dr Brian Walker: Which can be misused.

Hon STEPHEN PRATT: I am not sure whether the last bit he provided by interjection is always used. I have read parts of *The missing budget paper: An economic case to legalise cannabis in Western Australia*, and I know that the term is used in his foreword to that document. I think that part is key: it can be abused. The level of sophistication and maturity in the community about how the drug can be used is not quite there. It is purported to be harmless in the language used by Hon Dr Brian Walker, and “a healthy, healing herb” is a great bit of marketing spin. We have discovered that it can assist when it is used for medicinal purposes in a regulated manner and when the “nasties” are taken out of it. Hey, I am not a doctor; I am just having a go at this. I think the member can interject; I am not sure.

The PRESIDENT: Honourable member, all interjections are considered unruly, particularly inviting interjections.

Hon STEPHEN PRATT: I will start speaking through the President. I have not even got to the main part of my speech yet.

I wanted to refer to *The missing budget paper: An economic case to legalise cannabis in Western Australia* document because it presents a strong economic argument. I think that has value and tells one side of the story. More is still to be done in the space of the body of work in bringing the community along and displaying that there is community support for legalising cannabis.

Although members may disagree or agree with this amendment bill, I have my own personal concerns about approaching the changes to cannabis legislation in a piecemeal approach. I am aware that the government is undertaking a large body of work in this space. One example that I know has been raised is the concern about people being charged when driving under the influence of drugs when they have a prescription for medicinal cannabis. I know that work is being done on that.

I also want to speak about the negative impacts on society that happen. It comes back to the level of sophistication in the community. Cannabis can be taken in myriad ways. It can be put into foods and consumed. It can be smoked in a range of different ways. Depending on how that is done and whether it is being combined with other drugs, that is where the harm, use and abuse can come into play. When I talk about that, I am referring to whether people are having a joint or using some sort of bong. Is that the right terminology? Someone else can let me know.

Hon Wilson Tucker: It is the scientific term.

Hon STEPHEN PRATT: It is the scientific term?

Hon Sue Ellery: Nobody wants to help you out with that. Nobody wants to reveal how much they know.

Hon STEPHEN PRATT: As I grow older, year by year, my perspective on this stuff changes. I remember that in school it was probably considered to be a cool thing to be associating with these things. Now that I am almost 40—yes, I know—and I have young kids, my perspective has changed. I start to think about how I can prevent this having an impact on my children's upbringing because the damage is done in the early formative years. That is also probably when the prevalence of use and misuse is higher because teenagers think that they are invincible and will want to try a whole range of different things and take risks. This is when the damage can be done, and it can have an impact on the rest of their lives.

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Given the significant work that is ongoing in this space, I think it is probably a bit early to determine whether this amendment bill is the best way to proceed. I will leave that aspect at that, but I want to talk about a whole range of issues associated with this amendment bill and the use of cannabis. I have already referred to the “healthy herb, healing herb” quote and the fact that it can be abused. That is the key part of the quote that needs to be highlighted. I also referred to the report titled *The missing budget paper: An economic case to legalise cannabis in Western Australia*, which highlights the economic benefits of cannabis. It contains a nice info-graphic showing the ways it can be consumed and the regularity of consumption. It paints a picture of the level of sophistication of the consumption methods, regularity of use and whether people who submitted to that dataset are honest about how often they use cannabis.

As I said, the economic argument creates a lot of interest. We will certainly not be the first jurisdiction to go down the path of legalising cannabis, if it does happen. There are advantages to looking at what has happened overseas and in other jurisdictions to see both the positive and negative impacts of cannabis use.

Hon Wilson Tucker: Do you think you could be waiting a while?

Hon STEPHEN PRATT: I am not sure. I think there is still work to be done to bring the community to a point at which it would be comfortable with that, to be honest. I should not be inviting interjections, sorry.

I spoke about the different consumption methods of cannabis. That is an interesting point. There are usually one or two ways people can introduce drugs into their system and away they go. The impact of cannabis is different. If it is put in food, it can do certain things and if people smoke it, it can do other things. In the jurisdictions where it has been legalised, gummies and things like that are being sold. I am not sure how it can get to that point, but I have concerns about whether my kids could get their hands on something like that if it were handled improperly by the person who purchased it. We recently celebrated Halloween. If someone did something silly and decided to hand out treats containing cannabis, that would be dangerous, but I am no expert. I have seen firsthand the damage that cannabis can do to people who deal with it on an ongoing basis. Despite my anecdotal evidence, there is also a large body of evidence on the significant, physical and mental health harms related to cannabis. It comes back to the “use versus abuse” discussion, and the other health impacts that we know about, such as respiratory illnesses associated with smoking generally. I am sure that would extend to cannabis use if people used it on a regular basis.

I want to refer to a couple of points that Hon Dr Brian Walker made in his second reading speech, one of which Hon Sophia Moermond also mentioned. I have concerns about the issue of self-medicating. People have found themselves appearing before the courts as a result of self-medicating cannabis. I have concerns about that because these people are obviously in a desperate situation and trying to do whatever they can to manage the ailments from which they are suffering. I also have concerns that people might be self-medicating without first seeking the appropriate medical interventions.

I am aware, as also pointed out by Hon Lorna Harper during her contribution, that we are still working on different ways to provide medicinal cannabis to people. There is still a cost impediment. I know of people who have children with epilepsy. I am not certain but I think medicinal cannabis is on the pharmaceutical benefits scheme now. I know that the cost of a monthly prescription used to be in the thousands of dollars. People had to mortgage their houses et cetera to care for their loved ones. When medicinal cannabis is needed for a child, people will do whatever it takes to make sure they are cared for. If that treatment works, they will pursue it. That cost impediment has also led to people growing their own cannabis. I am aware of stories of people who have been charged as a result. That issue needs further investigation.

The only other point made in the second reading speech that I wanted to touch on related to cases of people being labelled as drug traffickers. Despite the fact that no profit was made and no money changed hands, drug trafficker declarations were given to those people. I get the point that Hon Dr Brian Walker made, but I still do not think it is okay at the end of the day because someone could grow and distribute cannabis free of charge. They could get some other in-kind benefit from going down that path.

I want to highlight the fact that more work needs to be done in this space. Given that this legislation was introduced by members of the Legalise Cannabis WA Party, discussing these issues in the chamber today goes some way to keeping this issue front of mind. There is still this body of work and the onus is somewhat on the legalise cannabis party and on the government, if it decides to go down this path, to make sure there is community support. The missing budget paper report includes a statistic on the number of people who support decriminalising cannabis. I could not see from where that figure was sourced or from where that number came.

Further work needs to be done on the evidence of community support. I still do not know how we can necessarily combat the challenges around how people are using cannabis and ensure that it does not fall into the abuse category. We could compare it with the legalisation of alcohol, which did not stop people abusing alcohol. More work can probably be done in that space.

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I have said on previous occasions that I appreciate the contributions made in this place from both members of the legalise cannabis party. We all understand that they were elected to this chamber to pursue issues relating to the legalisation of cannabis. I assume that this legislation is one attempt to head down that path. I have some concerns around whether a small amendment to a piece of legislation is the right approach or whether a larger set of amendments or changes down the track could be made. I do not know—I have had a briefing on the amendment bill—whether it could impact other pieces of legislation.

Efforts have been made by this government, especially around medicinal cannabis. There is a really positive story to tell about how this government has approached this issue. In 2014, whilst in opposition, Mark McGowan made a commitment to legalise medicinal cannabis. Three years later, we found ourselves in government and we made those changes. As soon as those changes were made, we were confronted with cost prohibition issues for people and the difficulties of sourcing medicinal cannabis in WA. A body of work was then done to make sure that we had better access. I think the Liberal opposition at the time initially opposed our moves to legalise medicinal cannabis and within months realised that it was on the wrong side and changed its view on things, so members' opinions about these things can be changed.

I started by speaking about prevention and I think this is an area of focus in which the government plays a significant role through school programs. Drug Aware is one that I have noted. I am also aware of in-community services such as the residential rehabilitation services that are funded through the Mental Health Commission. The number of beds associated with those services has grown under this government, and that plays a significant role in ensuring that people who have been impacted in a negative way or who have issues with the use and abuse of these substances can go into these programs and hopefully come out the other side as a better member of society and free of any addiction issues or reliance on cannabis or other drugs. It was 2014 when we committed to do that.

The last thing that I want to mention—I do not want it to be missed in all of this—is that the government is doing things in this space. Members will be aware that we have provided diversion options such as the cannabis intervention requirement scheme, which plays a significant role in assisting people who have found themselves in front of the court for a cannabis offence and diverting them away from prison and into a program that will educate them about whether it is the best thing for them to be associated with. I have touched on the residential rehabilitation therapeutic communities in the south west and metropolitan areas for those with issues related to alcohol and other drugs. We have opened the Midland Withdrawal and Intervention Centre and we also provide education services in schools.

A larger body of work needs to be done on this journey. Although I have had a negative personal experience with someone close to me, I am still open to learning more about this matter and seeing where the community stands on it. I think there is still a way to go. Now I will let someone else have a go.

HON WILSON TUCKER (Mining and Pastoral) [11.02 am]: I rise today to support the Misuse of Drugs Amendment Bill 2021. I appreciate that there are members in this chamber who are certainly more knowledgeable on the subject of cannabis than I am, and certainly the members of the Legalise Cannabis WA Party have, if I can use this term, more hands-on experience with the topic of cannabis than I do. We heard some comments from Hon Lorna Harper about her views on and some personal experience with cannabis, as we also heard from Hon Stephen Pratt. I am not here to argue against those personal experiences or views; I can only share my own. Members will be aware that for close to five years I lived in Seattle, Washington, where there is a thriving recreational cannabis industry. In my experience, it was a less harmful alternative than alcohol, and that view was shared by a lot of my friends. I understand that this is not the experience or view of a lot of people, but certainly a large cohort of people living in Washington would take a gummy on a Friday night—we heard about gummies—as a way to relax as opposed to drinking five or 10 beers or whatever it may be.

Hon Martin Pritchard: Did they do that instead of drinking?

Hon WILSON TUCKER: Typically, that was the case. I am sure that people in the community would probably take both, but I would not recommend it. My experience was in taking it as a standalone hard drug as a replacement for alcohol. People sleep much better and they certainly wake up feeling much more refreshed.

I understand that the Misuse of Drugs Amendment Bill 2021 is not focused on the legalisation of cannabis in WA and is not trying to set up a recreational industry for cannabis in WA—God forbid. It is trying to make some sensible updates to the threshold for a drug-trafficking offence in the Misuse of Drugs Act.

Foreshadowing the vote, which I am sure will not be successful, I would like to take this opportunity to acknowledge the cannabis party's advocacy in this space. I understand that it has been trying to bring this bill through the process for a couple of years, and hopefully it will get to a vote. We know that private members' time is rare and fleeting, so there are not many opportunities for a member to use that time to advance their cause or, indeed, a bill. I appreciate the cannabis party's commitment to getting this bill to a vote. Despite the fact that it is unlikely to be successful, I still think there is value and power in getting to a decision. It is my decision today to support the bill.

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HON DAN CADDY (North Metropolitan) [11.06 am]: I thank all the other members who have spoken. We certainly learn a lot from listening to members. Hon Lorna Harper has clearly benefited from her time on the Select Committee into Cannabis and Hemp. Indeed, I learnt a lot from listening to her talk about her experiences on that committee. I note that she said at one point that she felt like she was back in Scotland. With a motion that has come from Hon Dr Brian Walker and Hon Lorna Harper being the third speaker, I think all of us in this chamber felt a little bit like we might be in Scotland as well!

I have no firsthand experience with cannabis to draw on, but I do have, as does Hon Stephen Pratt, second-hand experience. It was a long time ago; in fact, it was in my early years of adulthood. It was an experience that saw one of my friends go from enjoying himself to being in the back of an ambulance in a matter of minutes. It has really coloured my view of cannabis for the rest of my life, which often happens. At the time, it was a pretty traumatic experience for me to see him leaving. I am not sure who travelled in the ambulance with him, but it was not me. I remember thinking at the time that I really wanted to go with him, but that is another story.

Hon Dr Brad Pettitt said that it is a short bill, and it is; it is a really short bill. However, just because the amendment is short, it does not mean that it cannot have a massive impact, and I think that is the critical thing that we need to look at. I want to look at the second reading speech of Hon Dr Brian Walker and then briefly look at the explanatory memorandum, which is short as well, given that it is a short bill. I then want to put on the record the current law in Western Australia for cannabis-related driver impairment and the testing regime. It is important during the course of this debate to at least put that on the record. People can look it up; if it is on the record in *Hansard*, it is there. I note that time is tight; time permitting, I may talk a little about the report that was published by the Select Committee into Cannabis and Hemp.

I shoot first to the explanatory memorandum of the Misuse of Drugs Amendment Bill 2021. There was one point in this that should be quite quick. Under the third heading, “Misuse of Drugs Amendment Bill 2021”, it states —

This amendment tackles any suggestion of injustice, arbitrariness, or unfairness within the Misuse of Drugs Act 1981 ...

“Unfairness” is a really subjective word. Unfairness is very much a matter of opinion. As I and Hon Stephen Pratt have talked about, for people who have seen either emergency situations or lives ruined due to cannabis—I have seen lives ruined due to other drugs, but, fortunately enough for me, not due to cannabis—I think that the question of unfairness is absolutely subjective. It is an absolutely subjective term. I think it is important to state that. If we take as our starting point in looking at this bill that we are saying that these laws are unfair, regardless of where I land on this—I think it is a bit too early to determine where I will land—I cannot accept starting from the premise that these laws are unfair.

I turn very quickly to the *Hansard* of Hon Dr Brian Walker’s speech in the second reading debate on the Misuse of Drugs Amendment Bill 2021. It was a good and concise speech, but I want to pick up a few points. We cannot always take everything that is uttered in this place as uncontested.

In the first line of Hon Dr Brian Walker’s speech in the second reading debate, he said —

It came as some surprise to me that the Misuse of Drugs Act 1981 had been in force for so long without a major rewrite.

I will talk about that in a minute. The member talked about the Pareto principle, which is interesting. I want to unpack that a little. I think that, although it may appear to be going down a rabbit hole, it is an important one, and I want to look at what it means in practice.

I think it is important to note that when it is stated in this place that the Misuse of Drugs Act 1981 has been in force without a major rewrite, that may well be the case, but a lot of legislation is systematically updated, if you like, through the use of amendments. A quick look at the last 20 years of this legislation that has now been in place for over 40 years shows us that there have been 12 amendment bills put to this act. That is an average of more than two for every cycle of Parliament. Sometimes—not always—incrementalism is preferable to a total rewrite. It is a fact that this law has been constantly reviewed. The Misuse of Drugs Amendment Bill 2023, obviously, is in the other place. The bill before us is the Misuse of Drugs Amendment Bill 2021. There is also the Misuse of Drugs Amendment Bill 2018, the Misuse of Drugs Amendment Bill 2011, the Misuse of Drugs Amendment Bill 2010, the Misuse of Drugs Amendment Bill 2006, the Misuse of Drugs Amendment Bill 2003, the Misuse of Drugs Amendment Bill (No. 2) 2010, the Misuse of Drugs Amendment (Search Powers) Bill 2016, the Misuse of Drugs Amendment (Methylamphetamine Offences) Bill 2017, and the Misuse of Drugs (Methylamphetamine) Amendment Bill 2007. Many amendment bills have been put. I cannot speak to them all. I do not know what they were all about, but, off the top of my head, I can see that at least three of them related to specific drugs, although not necessarily cannabis. There has been incremental updating of and continual looking at this bill. Although it may be true to say that there has not been—I want to get the words right—a “major rewrite” of the act, there has been a lot of focus on this

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legislation, and a lot of that has been in the last 20 years. As I said, when we look through that list, we see that, on average, more than two bills have been put to Parliament for each cycle of government.

I want to get to the second bit, because this is interesting. I quote from *Hansard* and Hon Dr Brian Walker's speech in the second reading. He said —

Bearing in mind the Pareto principle that the most effect can be achieved with the least input ...

That is an interesting one. To me, the Pareto principle is very much, in inverted commas, “causal law”, I guess we would call it. I know this is potentially not pertinent to the bill, but it has been used as a basis for saying that something is a change and a rabbit hole worth going down. The Pareto principle is more commonly known as the 80–20 principle. It is found in nature. People say that 80 per cent of fruit comes from 20 per cent of the tree. It is found in sport, whereby it is said that 80 per cent of the score comes from 20 per cent of the players. This principle is often quoted in business, although I guess it depends on the business, whereby it is said that 80 per cent of a business comes from 20 per cent of its clients. But in every one of these cases, that does not mean that the other 80 per cent of the tree, the team or the business contacts are not important; in fact, in many cases, they are critical. We need to tend to the entire tree or we will not get the fruit. I will use AFL as an example, but it could refer to any sport. It may well be the forwards who kick all the goals, but without the backs and the midfielders, the forwards will not get the ball to kick the goals. The rest of the team is critically important.

That is also the case in business. I remember when I had my business and I got to that happy stage at which a business owner looks at their client list and sees that it is full, so they get to start cutting clients. For anyone who has grown their own business, that is a happy day. They look at the clients they are going to cut, and—absolutely, Hon Dr Brian Walker—they come from the 80 per cent that gives only 20 per cent of the income; however, it is not that simple. They do not just start cutting off the bottom. One would be unwise to do so in business. Some clients may spend little, but they may have contacts and bring in other clients who will become big important spenders in the business. Some are simply good clients to have on the website when the company is touting for other business. Some clients may be small and spend little, but require only one phone call a year. I do not think this is a good principle on which to legislate. I think we need to look more deeply at that.

I refer briefly to a North American National Safety Council report on motor vehicle safety issues. This is interesting, because we will talk about driver impairment during the debate on this bill. This is a report on speeding, which is another issue. The report states that in dry conditions, speed was a factor in only 18 per cent of all crashes. By definition, that means that 82 per cent of crashes were caused by factors other than speed. Therefore, using the logic that we are using here, we would legislate that in dry conditions, there should be no speed limits. That simply does not follow. I as well as many people who have travelled to or lived in Europe know that speed conditions change in Europe depending on weather conditions. Europe is fairly advanced with digital signs. I can tell members that even in 1991, when I was living in Belgium, on the French highways, not all but a lot of the speed signs were weather dependent. But we would never say that because speed factors in only 18 per cent of crashes, we should not have speed limits.

I may well run out of time, but I want to put on the record, as I said I would, the current situation. I want to be clear about the current situation with regard to what I loosely term “drug driving” in Western Australia. Before I start talking about the role of the police, I want to say what an outstanding job our police officers do in Western Australia, right across this state, every officer from Commissioner Blanch right down to the latest recruits and graduates. I will quickly read from the report. This is the Select Committee into Cannabis and Hemp report, *Medicinal cannabis and industrial hemp in Western Australia*. The opening line under the title “Drug driving laws”, found at paragraph 8.23, states —

In WA, it is an offence for a person to drive, or attempt to drive, a motor vehicle while a ‘prescribed illicit drug’ is present in the person’s oral fluid or blood. The *Road Traffic (Drug Driving) Regulations 2007* declares each of the following drugs to be a ‘prescribed illicit drug’:

- THC;
- Methamphetamine; and
- ... (MDMA).

TCH obviously being the one that is pertinent to what we talking about today.

Hon Dr Brian Walker: THC.

Hon DAN CADDY: THC! My apologies—and I am even reading it. I appreciate the interjection; thank you, Hon Dr Brian Walker. The report continues —

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... a person commits an offence if they drive or attempt to drive a motor vehicle while under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle.

Under section 64AC of the Road Traffic Act it is an offence to drive a motor vehicle while a prescribed illicit drug is present in oral fluid or blood. The drugs that are prescribed illicit drugs, as I said, are THC, methamphetamine and MDMA. The offence does not have an element for being under the influence or being impaired, it simply relies on the presence of such substances, which I think gets to the core of what the member is talking about. The scientific evidence is clear that consumption of cannabis or cannabis-derived products containing the psychoactive compound THC, whether consumed lawfully or unlawfully, can affect a person's ability to safely drive a vehicle. It is also clear that a high proportion of recreational cannabis users are young people who are sadly already over-represented in road crashes and road trauma statistics. Community attitude surveys conducted for the Road Safety Commission show that a fear of getting caught is a powerful influence on driver behaviour and that random roadside alcohol and drug testing is and has been very effective as a general deterrent. Any suggested reforms, as Hon Stephen Pratt said, obviously need to be carefully considered based on solid scientific evidence, the best and most recent evidence we have to hand, and done in a matter that does not compromise any road safety outcomes.

Members in this place would be familiar with alcohol testing. I would be surprised if any of us have not been random breath tested many times. Unlike alcohol testing, our current roadside testing ability is unable to determine the level of impairment due to THC, nor is it able to distinguish between THC that has been consumed for medicinal reasons or indeed as recreational use. The Road Safety Commission is monitoring developments in both cannabis-testing technologies and related drug-driving laws across Australia and overseas, but has advised that until tests are available that measure cannabis impairment accurately and can be widely and cost-effectively deployed roadside, the safest course from a road safety perspective is to retain the current system, looking specifically at roadside drug testing for THC. I keep saying TCH; this is a problem, Dr Walker. As I said, I am sure that we have all been random breath tested for alcohol.

I will share a quick story. I had an incredible experience when I was driving down York Street in Albany. Thankfully, at the time, I was in a LandCruiser, because I was pulled over by a police officer on a horse. She told me to wind down the window and informed me that this was a random breath test. She very much had to lean down. She was very accommodating and allowed the passenger in my car to take a photo of it because it was quite funny. She had lean down from her horse into the LandCruiser to test me.

Hon Jackie Jarvis: Did she show you her sheriff's badge?

Hon DAN CADDY: I do not know what she would have done, minister, if I had been driving a Ferrari, because that would have been a sight to see. I have never been so lucky to have driven a Ferrari. I will never forget that. I have been random breath tested many times, but that one from many years ago sticks in my memory.

Under section 64AC it is an offence to drive a motor vehicle while a prescribed illicit drug is present. We have been down that path. There are also other offences under the Road Traffic Act that deal with driving whilst under the influence of drugs, section 63(1)(b), and driving whilst impaired by drugs, section 64AB. The definition of drug used in those sections is —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies; or
- (b) a Schedule 4 poison as defined in the *Medicines and Poisons Act 2014* section 3; or
- (c) a substance (other than alcohol) that, when consumed or used by a person, deprives the person (temporarily or permanently) of any of the person's normal mental or physical faculties;

Both of those sections have a defence available to the accused. That defence is found at section 63(7), and it is —

In any proceedings for an offence against subsection (1)(b), it is a defence for the accused to prove —

- (a) that the drugs, under the influence of which the accused is alleged or appears on the evidence to be, were —
 - (i) taken by him pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or
 - (ii) administered to him by a medical practitioner, nurse practitioner or dentist, for therapeutic purposes; and
- (b) that he —

It should say “he or she” or “they” —

was not aware, and could not reasonably have been expected to be aware, that those drugs were likely to render him incapable of having proper control of a motor vehicle.

There is also a defence available for section 64AB(8) —

Extract from *Hansard*

[COUNCIL — Thursday, 9 November 2023]

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In any proceeding for an offence against this section it is a defence for the accused to prove in respect of the drug, or each drug, referred to in subsection (5) —

- (a) that the drug was —
 - (i) taken pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or
 - (ii) administered by a medical practitioner, nurse practitioner or dentist, for therapeutic purposes; and
- (b) that where the drug was received or obtained by the accused in a packaged form, the packaging of the drug did not include a label advising that the drug was likely to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle ...

Debate adjourned, pursuant to standing orders.