Select Committee into Cannabis and Hemp — Final Report — Medicinal cannabis and industrial hemp in Western Australia

Resumed from 30 March.

Motion

Hon LORNA HARPER: I move —

That the report be noted.

I think we have all been waiting a wee while to mull over this report! I thought I would get some of the jokes out straightaway!

I had the privilege of being a member of the Select Committee into Cannabis and Hemp, which looked at medicinal cannabis and industrial hemp in Western Australia. I thought I would start by referring to some of the comments made when this committee was formed. A lot of people made a lot of comments. We took them reasonably well at the beginning and then we starting arguing back. When the committee was formed, our chair was Hon Dr Brian Walker, who unfortunately, as we aware, is away on COVID business. It is not quite urgent but he is away. Our deputy chair was Hon Matthew Swinbourn, who is away on urgent parliamentary business. Also joining us on the committee until 13 February 2023 was Hon Jackie Jarvis, right up to the point when she decided to leave us because she got a better gig as a minister.

Hon Jackie Jarvis: That was a "high" light though!

Hon LORNA HARPER: It was a very good highlight. A former member, James Hayward, was a member of the committee until 24 July.

At the beginning of this speech, I would like to extend my thanks, and I am sure the thanks of the committee, to the tireless patience of our advisory officer, Laura Hutchinson. Laura had to deal with all of us, so I really thank her and also Tracey Sharpe, our committee clerk, for everything she had to deal with.

Although people do make jokes, medicinal cannabis is quite a serious matter. Although cannabis-based medicinal products have been lawful across Australia since 2016, the Select Committee into Cannabis and Hemp identified that there are barriers for healthcare professionals and patients in relation to prescribing and accessing medicinal cannabis. I will probably leave it to Hon Dr Brian Walker to make one of his regular talks on how wonderful it all is. We have a slight disagreement about some of that; I might think a lot is wonderful but I think a bit of work still needs to be done.

During this inquiry, we looked into the potential to amend the current legislation to address some of the barriers to the use, prescription, availability and affordability of medicinal cannabis products. We also looked at the potential benefits and risks of permitting industrial hemp for human consumption.

As somebody who got to eat hemp straight off a plant during our visit to the south west, only to spit it out because it tasted foul, it was quite interesting. We also got to taste hemp oil and we saw hemp grain. It was very interesting to go to the south west and see these things.

We need to go back and find out where all the information comes from and why people confuse medicinal cannabis with marijuana. Industrial hemp, medicinal cannabis and recreational marijuana all come from the same species of plant, *Cannabis sativa L*. However—that is a very important word—they are genetically distinct forms of cannabis with different chemical compositions, uses and cultivation practice. How medicinal cannabis is grown is completely and utterly different from how people would grow marijuana for recreational use. I do not like using the word "recreational". How medicinal cannabis is grown for medicinal prescribed use is completely different from the black market in marijuana. As members could imagine, medicinal cannabis is grown in very strict circumstances with very strict protocols around contamination and ensuring that it is as pure as possible. It is grown in different areas to ensure, as occurs with all medicines, that if it is consumed by a human being, it needs to be as pure and as perfect as possible, whereas black market marijuana could be grown in our next-door neighbour's garage with hydro, lights and things like that. It could also be artificially enhanced with lots of chemicals to increase the tetrahydrocannabinol levels so people get higher quicker and so that more money can be made from it. There are differences. We do not know what has gone into it; we do not know what chemicals have been used on it. Although people think they have a herb that is good for them because it is a herb, they could be ingesting or smoking a lot of chemicals. I am not sure what farmers put on plants to make them grow. As members can probably guess, I am not really green fingered or very good at growing plants. I usually stick to growing yuccas or frangipanis because the meaner we treat them, the better they grow. I think it is safe to say that I will not be growing any cannabis plants at my house. If the yuccas keep dying, people will know that they will be quite safe.

Medicinal cannabis is pharmaceutical-grade medicine available only via a prescription from a medical professional and dispensed from a pharmacy. All other use of cannabis, including for self-attributed medical reasons, remains

unlawful in Western Australia. All medical practitioners can prescribe medicinal cannabis, providing it is clinically appropriate for the patient, and they obtain the necessary approvals. Patients use medicinal cannabis to alleviate symptoms of various health conditions, including, but not limited to, epilepsy, multiple sclerosis, chronic pain, nausea and vomiting, sleep disorders and palliative care. It is widely known that medicinal cannabis is used for those conditions. Unfortunately, some people believe that black market marijuana can also be used for some of these conditions. That is not pharmaceutical grade.

Western Australian and commonwealth legislation has created a permit system for accessing, prescribing and manufacturing cannabis for medicinal and scientific purposes. The Medicines and Poisons Act 2014 provides a framework regulating medicines and poisons in WA. The Therapeutic Goods Act 1989 governs the scheduling, product registration, access pathways and quality standards of all medicines in Australia, including medicinal cannabis.

There are barriers to the use of medicinal cannabis. That was one of the main goals of the committee. At the time the report was written, Australia-wide, more than 300 000 approvals had been issued to allow patients to access medicinal cannabis products. However, many barriers still exist. The first barriers are regulatory and administrative. The committee heard that the need for medical practitioners to obtain approval from the Department of Health before prescribing a schedule A medicinal cannabis product was an unnecessary administrative burden. The committee also heard that the Department of Health's prescribing limits of 40 milligrams of THC a day was a barrier to access. A second barrier is that some clinicians are reluctant to prescribe medicinal cannabis products due to the lack of randomised control data on efficiency and long-term effects and a lack of confidence in their knowledge of the subject and its regulatory processes. Healthcare practitioners are often time poor and do not have the time to dedicate to researching the prescribing process and current scientific literature. I suppose that some patients are reluctant to ask their doctors if they can access medicinal cannabis because they may believe that a stigma is attached.

The reason for the lack of randomised control data for medicinal products is complex. It relates to factors such as the commercial viability of conducting expensive trials, issues with commercialising the cannabis plant's compound via patenting and the complexity of the plant itself.

The DEPUTY CHAIR: I will interrupt there. The question is that the report be noted. Hon Lorna Harper.

Hon LORNA HARPER: Thank you, deputy chair. I did not hear the ding.

A best-case scenario would be to encourage clinical trials to assess the effectiveness and safety in areas of public demand, such as chronic pain and anxiety disorders. There is scope to develop a patient registry to collect a uniform dataset across all indications for patients prescribed medicinal cannabis. The Therapeutic Goods Administration special access scheme application process collects some data, but there is room to improve.

The third barrier is the costs to patients. This is one of the areas that came up on a regular basis when we were speaking to people and they were giving evidence to the committee; that is, it is, cost-prohibitive to a lot of people. I have no idea how much black-market marijuana costs, but medicinal cannabis can end up being quite expensive. It is expensive because it is not subsidised through the pharmaceutical benefits scheme. Whether medicinal cannabis products should be included on the PBS will be a matter for the commonwealth government. It is outside the scope of this report. However, there is scope for the WA government to implement a compassionate access scheme for patients who have not benefited from other therapeutic options. The committee noted that should medicinal cannabis prove a viable alternative for these patients, the costs saved to the health system may significantly outweigh the scheme's cost. If Hon Dr Brian Walker were here at the moment, I imagine he would start talking about the cost of opioids for pain management that a lot of cancer patients may use and how they may be better off with medicinal cannabis. Then he would tell us of all the benefits with the in-depth knowledge he has as a medical professional. Not being a medical professional, we will just leave that for him.

The fourth barrier, and one we really have to think about, is driving laws. To be very clear, it is unlawful for anybody to drive with any tetrahydrocannabinol in their system, regardless of whether it is legally prescribed and whether the person is actually impaired. The mere presence of THC in a person's bodily fluid has no correlation to their current level of impairment. Someone might take some medicinal cannabis, which has some THC and some cannabidiol—I hope members have read some of the report so they understand some of the terms we are using—at night to help with sleep because they suffer from chronic pain. As somebody who has problems with sciatic nerves, it would be really good thing right now. Say I was prescribed with medicinal cannabis to help me sleep because of sciatic nerve pain and I took it before I went to bed. By the time I got up, showered and was ready to leave the house the next morning, I would feel that I was not impaired in any way and that I was fine to drive. However, if I was pulled over by a police officer and I was drug tested, I would still have a level of THC in my saliva, which means that it would be unlawful for me to drive and I would have to stop driving straightaway. I have never been stopped for any of that, so I do not know what happens next with the police, but I imagine I would get taken away for further testing et cetera. That is something we have to consider very, very carefully in terms of where we are at and how we can move on.

There is a fifth barrier that relates to medicinal cannabis and that is zero-tolerance workplace drug testing. The committee recommends treating medicinal cannabis the same as other potentially impairing prescription drugs and producing contemporary information resources to assist employers with developing workplace drug policies. Working on a mine site is a very dangerous occupation and people have to be very aware of what is going on. There is compulsory drug and alcohol testing at a lot of workplaces. Again, a person may have taken medicinal cannabis to treat chronic pain, which is the easiest thing to come up with and think about, to assist them sleeping so they are not taking opioids or using alcohol to assist with anything. Again, they would sleep it off overnight, they would have a good sleep and get up refreshed for work, but if they were drug tested, I believe on a mine site it would be straight off —

Hon Martin Pritchard: With regards to alcohol, many people who drink alcohol in the evening have a sleep, have a shower in the morning and often feel they are not impaired. They drive off, get pulled over, they are tested and they are over .05. A person may have a personal view about whether they feel impaired or not, but there has to be a line in the sand, and with alcohol it is a blood alcohol reading of .05. I am not sure whether you could rely on a person's personal view of their own impairment because often with alcohol they swear black and blue that they are not impaired, but according to the law they are.

Hon LORNA HARPER: Once we get further into the report, recommendation 8 states —

> The Western Australian government amend the *Road Traffic Act 1974* —

Hon Dan Caddy: Chapter 9.

Hon LORNA HARPER: I am looking at recommendation 8, which states —

> The Western Australian government amend the *Road Traffic Act 1974* and *Road Traffic (Drug Driving) Regulations 2007* to introduce a defence for patients using medicinal cannabis as prescribed who are not:
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> - driving whilst impaired; or
> - under the influence of alcohol.

We spent a long, long time looking at this and we made some recommendations. The government response to recommendation 8 states that the government noted this and it will establish a medicinal cannabis and safe driving working group to consider reasonable amendments to Road Traffic Act 1974 and Road Traffic (Drug Driving) Regulations 2007 that would allow a defence for patients using medicinal cannabis as prescribed who are not driving whilst impaired. A lot of work has to be done on this. It is not a case of—I do not know what the term is—"I got my law degree from a cornflakes packet and I will decide how it is going to be." A lot of work still has to be done in this area. It is not just a case of everyone should have it and that is fine; there is still work to be done.

Hon Martin Pritchard: With regards to impairment, apart from a person's own view as to whether they are impaired or not, is there some test outside of that that can determine whether a person is impaired, whether they view it themselves or not?

Hon LORNA HARPER: That is a really good question. Of all the travels the committee went on, the countries and places we went to, and different authorities we spoke to, at that point in time there was not a test for impairment. There are tests to say that someone has THC in their system, but there was no test to say that there was impairment. If the member looks at the whole chapter, he will see some of the responses from some of the police officers who attended. They were very clear that they would follow the law as it is right now. They will just keep going through with that. Not one country we visited had come up with anything to state that it had a test for THC impairment et cetera. Again, I am sure Hon Dr Brian Walker will go in depth into some of that stuff, and there is quite a lot.

I leave my comments there to allow my colleagues to put their points.

Hon DAN CADDY: I am very happy to speak, and be one of the first people to do so, on this report of the Select Committee into Cannabis and Hemp, *Medicinal cannabis and industrial hemp in Western Australia*, which was handed down in March this year. I recognise the hard work done by the members on this select committee, the chair, Hon Dr Brian Walker; my colleague who just spoke, Hon Lorna Harper; Hon Matthew Swinbourn; Hon Jackie Jarvis, MLC, for her tour; and James Hayward.

I have spoken about hemp on more than one occasion in this place. The uses for hemp are certainly impressive and include hemp blocks for housing. I think Hon Sophia Moermond has used the term "hempcrete". Hemp products are found right around the world. The last time I spoke on this, I think I said that over 25 000 products are derived from hemp. The last time I was on my feet talking about this issue, I talked about changes to the misuse of drugs laws because we were indeed talking on a bill in this place. I talked at length about the drug-driving laws, although I did not finish my contribution, unfortunately. I want to make the point today that one of the more contentious parts of any discussion is whether marijuana is used in a recreational sense or is medication given by a doctor. It

is interesting that when Hon Lorna Harper was speaking, she took an interjection on that point and there was a very cordial cross-chamber conversation, obviously through you, deputy chair, about that very issue.

Later on I will talk about chapter 8, "Prescription drug driving", and chapter 9, "Workplace drug testing". When I spoke previously about driving offences, I listed in quite a lot of detail many of the specific offences that relate to driving while under the influence of substances, one of which is obviously cannabis, so I will not go through that again. As I said, this is the area that is probably most talked about. I look forward to the comments from the chair of the committee, Hon Dr Brian Walker, when he gets an opportunity to speak on this report because of all the people in this chamber, he is the one who has firsthand knowledge of dispensing medicinal cannabis.

Hon Stephen Dawson: We should probably wish him a speedy recovery from COVID as well.

Hon DAN CADDY: We should. He would no doubt be speaking on this today if he had not been struck down with COVID. On behalf of the Acting Leader of the House and everyone else here, I wish him a speedy recovery. I look forward to him speaking on this report because I would like to hear the firsthand knowledge. We have heard a little bit of it before, because, as has been pointed out by other members, most of the time when Hon Dr Brian Walker is on his feet, he advocates for cannabis in many different ways.

As I said at the outset, I want to look at the drug-driving laws because there is a huge amount of advocacy out there for either amending or relaxing these laws, depending on which group is advocating for it. This is really one of the pointy ends of this debate. What I find interesting in the report is that chapter 8 is about prescription drug driving, while chapter 9 is about workplace drug testing, for which I do not see the same advocacy. I do not hear people saying that we should not have drug testing in the workplace. I do not hear groups saying that drug testing in the workplace should be relaxed or even reviewed in any way. I ask myself the question: What is the difference? Why do we think workplace drug-testing laws are important? The reason we think they are important is that people want to be safe in their workplace. People may operate a machine in their workplace, and impaired operation may lead to injury to themselves or someone else or to the death of themselves or someone else. I will just pause and let that sink in for a minute. The two things are identical. If someone is driving a car while impaired, they are, by definition, operating a machine and if something goes wrong, they may well injure themselves or someone else or they may cause their own death or the death of someone else. I find it incredibly interesting that some people are advocating for reviewing, relaxing or amending the drug-driving code, but, as a society, almost to a person, we stand firmly behind drug testing in workplaces. This goes to something that I spoke about the last time I spoke on this topic in the chamber, and that is the concept of unfairness. I said that when we talk about laws, unfairness is an incredibly subjective word. What some people see as unfair, many of us may see as a law, rule or regulation that protects or strengthens society. I think that is an interesting point to make when we consider the calls to re-evaluate the drug-driving laws.

Wholesale changes to some of these things has been advocated for by the chair of the Select Committee into Cannabis and Hemp. I understand that he comes to this debate with a lot of knowledge, but, as I pointed out the last time I was on my feet, a lot of these laws have been changed over time and incrementalism is often the best way to go.

I am not going to go through the report chapter and verse like my good friend Hon Lorna Harper. She is far more familiar with it than I am, but let us have a look at the background to this report and what has happened. It is a matter of fact that this committee was established and it tabled its report on 30 March 2023. In the report are the 16 recommendations made by the committee. Nine of them relate directly to the Department of Health. In its response, the government supported three of the recommendations partially—the language we use is "in principle"—and it supported another three recommendations, but the other three of the nine recommendations were not supported. Separate to these, recommendation 8 relates to defences under the Road Traffic Act 1974 for driving while using medicinal cannabis. This goes to exactly what I was saying. This is one that we pull out and talk about. This is one that instigated the cross-chamber conversation when the previous speaker spoke. As I said earlier, it is when we get to the drug-driving laws that we really hit the pointy end of what this is about.

Hon Martin Pritchard interjected.

Hon DAN CADDY: Yes—when the rubber hits the road. That is very good, Hon Martin Pritchard. That is a dad joke like none other! I am impressed.

The government has commenced the process of establishing the Medicinal Cannabis and Safe Driving Working Group. This group will be led by the Department of Health and it will review all the current legislation. It will review the Road Traffic Act and the regulations. We are prepared to look at it.

Hon SHELLEY PAYNE: It gives me great pleasure to speak on this report. I want to thank the Select Committee into Cannabis and Hemp for all its work on this report. It was a great thing that the government did. I want to say a couple of things about the report and the issue of legalising marijuana. This is based on my experience of trips back to Canada, which has legalised marijuana, and I have some negative comments about that. We are in a much

different time to when Canada legalised marijuana. We have been through the vape issue, its health effects and the things that we are dealing with there. The one thing that really struck me about Canada legalising marijuana was the smell of it everywhere and smelling it all the time, whether it was just outside the shopping centres, or in the ski line-up. If we were to ever legalise this stuff—which I do not think we will in any foreseeable future—I think it would have be in a form that was not smoked, because of the impact that kind of product has on health and the public amenity. I think we are all used to not having much cigarette smoke around, only to then be in a place where we are getting a lot of smoke and smell. That was one important thing I note about my experiences.

We only have a few minutes left, so I note a few of the comments about the recommendations. An extensive number of recommendations were made in the report. Hon Dan Caddy, who is away on urgent parliamentary business, talked about a few of those as well. The government response was really great, with 11 recommendations supported in full or in principle, one recommendation partially supported, two noted, and only two recommendations that were not supported. Recommendations 1 and 2 deal with an issue that Hon Dr Brian Walker has brought up on a number of occasions.

Consideration of report postponed, pursuant to standing orders.

Progress reported and leave granted to sit again, pursuant to standing orders.