CONTROLLED SUBSTANCES (CULTIVATION OF CONTROLLED PLANTS) AMENDMENT BILL

Wednesday, 30 May 2006

Today I introduce a Family First bill to increase penalties for cannabis cultivation in South Australia. My bill will bring what are comparatively low South Australian penalties for the cultivation of small cannabis crops into line with penalties found in other states within Australia. The current law, specifically section 32(6), which is soon to become section 33K on assent of the Controlled Substances (Serious Drug Offences) Amendment Bill, provides for a maximum penalty of only $500 for the growth of up to 10 cannabis plants for personal use. That amount is prescribed in the regulation under section 8 of the Controlled Substances (Prohibited Substances) Regulations. To be clear, that means that the maximum penalty that a magistrate can impose is $500, nothing more, no matter if it is a person who has been guilty of that offence 10 000 times (or whatever it may be). That is all they can do—it is the absolute maximum they can do. This is seriously out of step with penalties in other jurisdictions.

I was discussing this matter with a practising lawyer who informed me that he had experienced occasions where magistrates had lamented that in sentencing the maximum penalty available to them to impose on repeat offenders was $500. We know that when magistrates start calling for stiffer penalties there really is a need to make a change. This is the case, even though the number of plants might have a street value of up to $40 000. The $500 maximum fine remains even if the offender has multiple prior convictions, as I said, for growing up to 10 plants each time and even if the offender has set up an elaborate hydroponics system to cultivate the plants. As soon as they say it is for personal use then the maximum $500 penalty applies.

Family First believes that a maximum $500 penalty is manifestly inadequate and out of step with penalties found in other states for what is increasingly accepted as a serious and dangerous drug. On 30 April the *London Daily Mail*

ran a story highlighting research from the Yale University School of Medicine in the US, which contained this conclusion:

Just half a joint of cannabis can trigger symptoms similar to schizophrenia, psychiatrists have warned.

The article also noted:

Research shows that even small amounts of the drug can lead to paranoia, hallucinations, delusions and other effects more commonly associated with schizophrenia and other mental illness.

Earlier research at Yale has shown a clear link between cannabis use in teenage years and mental illness later in life. I will quote from some of the research conclusions:

Those who smoke the drug regularly at 18 were 1.6 times more likely to suffer serious psychiatric problems, including schizophrenia, by their mid-20s. For those who are regular users at 15, the stakes are even higher, with the risk of mental illness being 4.5 times greater than normal.

That is a 450 per cent increase in the risk of acquiring schizophrenia for somebody in their early 20s if they were a regular user at the age of 15, and our response is a maximum $500 fine for people who grow up to 10 plants. Clearly, there is a real problem that needs to be addressed.

Research published last month from King's College in London had 15 healthy volunteers undergo MRI brain scans after consuming marijuana, concluding that the drug interferes with the inferior frontal cortex in the brain. Other research carried out at the Maudsley Hospital also suggested that the interference with brain function can cause permanent damage, particularly in cases where young teenagers were consuming cannabis while their brains were still developing. I will quote directly:

For those who started up in their early teens, there is some evidence that five or 10 years after they have stopped they are left with cognitive impairment. Family First is therefore convinced that cannabis is a dangerous drug. It is damaging young adolescents' brains and it clearly contributes to the mental health epidemic being experienced in our state and, indeed, across the country at the moment.

Family First believes that the current penalty scheme does not adequately address the now accepted dangers of this drug and provides little disincentive for those growing smaller quantities of the plant for their own use or profit. We note, of course, that it is very difficult to prove that the drug was actually being produced for sale.

Because the section only allows for fines, magistrates are barred from using other sentencing options such as good behaviour bonds with attached orders to participate in treatment programs, for example, community service, suspended sentences and imprisonment. Although the Sentencing Act does give magistrates some other options, in practice I understand that small fines are the almost uniform penalty for personal use cultivation. Again, it is worth stressing that $500 is the absolute maximum penalty that can be imposed, regardless of how many times a particular offender has been through the courts facing the same offence or to give account for the same offence.

My bill today will allow magistrates the full range of sentencing options for those caught growing cannabis crops, even for so-called personal use. In most cases thousands of dollars and sometimes tens of thousands of dollars of police resources are used to investigate and prosecute a drug cultivator, who can then be fined only a maximum of $500—again, despite the fact that they can make up to $40 000 from the particular crop they have grown.

On 15 March this year, I raised a case concerning Ms Denese Campbell, whose home at Munno Para was raided by police whilst she was in the process of cultivating a crop. She was fined $500, even though she was also caught with about three kilograms of the drug on her which she admitted she was

about to sell. I am referring to a slightly different kind of case in my bill, I acknowledge, but I asked the Minister for Police at the time whether the basic costs of the police investigation and the costs of bringing this individual to court would have been more than $500 and, quite rightly, he acknowledged that it would have been. So with the maximum $500 fine we do not even recoup the costs of bringing these people to court on many occasions, although I acknowledge this is not the only consideration, of course.

More than that (and I think the most compelling reason) is that our penalties for crops of cannabis grown for so-called personal use are out of step with other states. I seek leave to have a statistical table, which outlines the penalties for the other jurisdictions within Australia for the same offence, inserted in *Hansard* without my reading it.

Leave granted.

Penalties for cultivation of small numbers of cannabis plants across Australian jurisdictions

State	Act	Number of plants	Penalty
NSW	*Drug and Misuse and trafficking Act 1985* (s21 and Schedule 1)	Small quantity=5 plants	20 penalty units &/or 2 years im-prisonment ($110 per unit)
Vic.	*Drugs, Poisons and Controlled Substances Act 1981* (s72B and Schedule 11)	Small quantity=50g Traffickable=10 or more plants are considered. See s72B(a) for personal use defence	20 penalty units &/or <1 year imprisonment ($107.50 per unit)
Qld	*Drugs Misuse Act 1986* (s9(d) and	Traffickable=plants that have an	Less than trafficable amount

	Drug Misuse Regulation Act 1987 (Schedules 1-3)	aggregate weight of >500 grams	15 years imprisonment
WA	*Misuse of Drugs Act 1981* (s7(2), s11, s34(e) and Schedule VI)	10 plants give rise to the presumption of intent to sell/supply	Fine not exceeding $2 000 and/or imprisonment not exceeding 2 years
SA	*Controlled Substances Act 1984* (s32(6) and *Controlled Substances (Prohibited Substances) Regulations 2000*	Personal use is <10 plants (see reg 8)	Penalty not exceeding $500
Tas.	*Misuse of Drugs Act 2001* (s22, s25 and Schedule 1)	Traffickable=20 plants	50 penalty units or imprisonment <2 years ($100 per unit)
NT	*Misuse of Drugs Act 2001* (s7(2)(c) and Schedule 2)	Traffickable=>5 and <19 plants	$5 000 fine or imprisonment for 2 years
ACT	*Criminal Code 2002* (s618(2)	3 or more cannabis plants or cultivates 1 or 2 cannabis plants artificially	200 penalty units and/or 2 years imprisonment
	Drugs of Dependence Act 1989 (s162)	1 or 2 cannabis plants	One penalty unit ($100 per unit)

Essentially, the table shows the act under which the penalty applies, the number of plants for which the penalty would apply, or becomes applicable, and the penalty imposed in each of the states and territories across Australia. Clearly, South Australia has by far the most lenient penalties in the country with respect to growing up to 10 cannabis plants. For example, New South Wales specifically lists a term of up to two years' imprisonment; in Queensland, if there is a less than trafficable amount, there is a possibility of up to 15 years' imprisonment; in Tasmania, it is up to two years' imprisonment; and in the Northern Territory, it is up to two years' imprisonment—and on and on it goes. In the Australian Capital Territory, it is up to two years' imprisonment. So, clearly, we are well and truly out of step with what is happening across the country with respect to what is potentially a very dangerous drug.

Members might note from the statistical table that South Australia stands almost alone in specifying a fine only for the cultivation of cannabis for personal use. The only other jurisdiction that appears to limit the penalty to that has been listed. Most other jurisdictions allow their magistrates additional sentencing options. So, it is no wonder that Adelaide has sometimes been called the cannabis capital of Australia.

To some degree, this bill is a limited version of the bill I previously introduced in this place which sought to amend the Controlled Substances Act to criminalise the cultivation of one cannabis plant in place of the current cannabis expiation notice scheme. That bill also included an increase in penalties for cannabis cultivation. However, other aspects of the bill were not able to gain government support. Cannabis is a dangerous drug, which requires a serious solution with realistic penalties. Again, I stress that $500 is no penalty at all when the potential gain is up to $40 000 from a crop; that we are out of step with the rest of the states and territories in Australia, and that really must change. I commend the bill to members.