Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

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DRUG LEGISLATION AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (4.09 pm): I first start by thanking the Attorney for the briefing her staff gave me earlier this week and this afternoon on the proposed amendment, which I will return to at a later time. The use of drugs in our society continues to destroy the lives of not just the users and abusers but also their families and their loved ones. It is bad enough that people's lives are destroyed as a consequence of taking legal drugs, alcohol, pharmaceuticals and tobacco, but sadly we see many hundreds of people each year dabbling in illegal drugs such as cannabis, speed, cocaine, ecstasy and many others with devastating consequences. It is not enough that this country loses thousands of lives as a consequence of the abuse of legal drugs and the fallout that flows from that, with devastating consequences to family members; we now find each year hundreds of predominantly young men and women dying because they did not understand the inherent risk in consuming and abusing illegal substances. My heart goes out to any member of the public who has had their family devastated by drug abuse.

I do not have much sympathy for those who import, produce and sell drugs. It is those cowards who often start perfectly healthy young men and women down a devastating and, in a number of cases, deadly track. We as a society do have certain obligations. Yes, I have many times in the past made it clear that those who become involved in drugs know the risks. However, that does not absolve this House or the people of Queensland from the responsibility to bring those people back from the brink of destruction.

With that in mind it is worthwhile looking at some recent research on substance abuse. At a conference on chronic youth offending in Adelaide Dr Tony Makkai, the director of the Australian Institute of Criminology, released the latest report from the institute entitled *Alcohol, drugs and crime: a study of juveniles in detention and key findings from the drug use careers of juvenile offenders study*. The focus of the research was on the drug and alcohol use and criminal careers of 371 young people between 11 and 17 years of age who were sentenced to or remanded in detention in 2004. The report stated—

The report found that in the six months before entering detention, 71 percent of youths had used one type of substance regularly and 29 percent used more than one type of substance regularly.

The most common type of substance was cannabis, 63 per cent, followed by alcohol, 46 per cent, and amphetamines, 20 per cent. The report went on to state that almost all of the juveniles had committed property offences, 98 per cent, while 84 per cent had engaged in violence.

Finally, the report highlighted the need to target risk factors such as abuse, neglect and family drug use during a child's development to reduce the risk of drug use and addiction in later years. Whilst the report focuses on both legal and illegal drugs, the worrying trend is that people as young as 11 are involved in the daily use and abuse of substances. Their bodies simply cannot cope with these substances. Often it leads to other addictions to stronger and more devastating drugs thus also increasing the risk of crime.

It is a well-known fact that drug use—and here I refer to illegal drug use—brings with it many crimes that beset our community including breaking and entering, stealing, purse snatching and the like. In October 2005 the Australian Institute of Health and Welfare in Canberra released the 2004 National Drug Strategy Household Survey. It found that in 2004 more than six million Australians aged 14 years and older

had used an illegal drug in their lifetime. More than 2.5 million Australians had used an illegal drug in the prior 12 months. Australians aged 20 to 29 years were more likely than those in the other age groups to have used an illicit drug during their lifetime and in the last 12 months, although the difference between that age group and those aged 30 to 39 years was very small for lifetime use. We have to consider that in one year 2.5 million Australians had used an illegal drug. The statistics from the institute in Canberra showed overwhelming that marijuana was the first drug choice, followed by speed and then ecstasy.

These young people are destroying their lives. They are losing large gaps in what should be a productive, enjoyable and learning period of their lives. What they end up with is a period of some five to 10 years—if they survive—during which they simply have no recollection of what they did and where they lived. In fact, they live in a drug induced haze. They completely destroy the best period of their lives. This is when they should be learning what life is all about, taking on board the life experiences of other people and then forming their own futures. This is a great sadness for our community, and what we can do to assist them we certainly should do.

It is interesting to note that the Institute of Health and Welfare in Canberra lists curiosity and peer pressure for both males and females as the major factors for why they first use an illegal drug. Those two factors are far and away the major factors in why people try drugs.

One further statistic contained in the report is that the source of supply of marijuana or cannabis is a friend or acquaintance in 69.6 per cent of cases for males and 69.1 per cent for females, whilst dealers provide 18.7 per cent and 14 per cent of supply respectively. The sad statement is that so-called friends cause or can cause the ultimate death of so many of our young people simply because they are being a mate and putting pressure on their friends to try a drug. That trail can lead to death or certainly a reduction in the enjoyment of life as time goes by.

It is very clearly known medically and otherwise that the use of marijuana is destructive to a person's health and has significant and ongoing psychological and mental issues associated with it. I do not believe anybody would doubt the effect illicit drugs have on people, whether they are young or old. It is now important to consider the impact the Drug Court has had to date on a range of factors in Queensland. I start by quoting Drug Court magistrate John Costanzo, who defined the Drug Court as—

A court driven program that provides drug addicted offenders with an opportunity to rehabilitate instead of being locked into the drug/crime/jail cycle.

That is absolutely apt. In my earlier career I had occasion to deal with many drug offenders and their families. There is absolutely no doubt that that cycle exists. The only word that is missing is 'death', because drugs kill our young people every day. As a consequence of the establishment of other specialist drug courts in the US, England, Ireland and jurisdictions in Australia, notably New South Wales, Victoria, South Australia and Western Australia, to varying degrees, Queensland legislation was introduced into the House on 23 November 1999. The bill was passed by the House on 2 March 2000 and received assent on 8 March 2000.

In the Queensland model, the mechanisms for rehabilitation are provided for in an intensive drug rehabilitation order. It is a whole-of-government approach which fundamentally intertwines the health system and the criminal justice system. It is one pure example of where all the arms of state government across all spectres work together to resolve an issue that is impacting daily upon not only the people who use drugs but also those throughout the length and breadth of Queensland.

There are three phases under the current legislation. Offenders begin in phase 1 with more frequent court reviews and more frequent court testing. Once the person is detoxified and achieves a significant period of abstinence, phase 1 is complete. Following further abstinence and stabilisation of accommodation, personal and family issues, phase 2 is complete. Phase 3 then sees the intensity of supervision diminishing, and other interventions and reintegration measures are increased. In all it takes somewhere between nine and 18 months for a person to complete the program. In the 2003 final report on the south-east Queensland Drug Court, Tony Makkai stated—

All of those issued IDRO report having tried cannabis, heroin, amphetamines and benzodiazepines and the vast majority had used one of them in the six months prior to their initial health assessment. The three most common illegal drugs were opiates, amphetamines and cannabis.

The mean age for initiation into drug use occurs around 15 years for all court referrals. However, it varies by drug type, beginning with cannabis at around 14 years followed by heroin and amphetamines at around 19 years followed by benzodiazepines at around 21 years. Tony Makkai states in the final report on the Drug Court that only nine per cent of graduates have reoffended for any offence. This is much less than the 32 per cent of terminates, 47 per cent of prisoners and 61 per cent of those who refuse to go on the program. At page 41 of the final report he states—

All groups show declines in their average rate of offending. The percentage declines from pre to post entry indicate the largest decline is for graduates (87 percent) followed by the prisoner comparison group (74 percent), terminates (55 percent) and refusals (51 percent).

Based on those figures, the Drug Court appears to provide a real alternative to people who are addicted to drugs and who are, in essence, destroying their lives. The Drug Court, even if it saves one life and the agony of one family, is worth it. There is very little we should not do to save our young people from an horrific death and their family from an agonising future.

Let us now consider the bill, bearing in mind its intent is to provide a safety net for those people who are drug dependent. The new objectives as contained in clause 3 to my mind encapsulate what this bill is all about—that is, a system whereby the community, the individual, the courts and prisons win. I note in particular that there are a number of changes in the bill, including what is a disqualifying offence. The definition associated with that phrase—that is, a disqualifying offence—excludes not only offences that are indictable but all offences involving violence against another person where the allegation of personal violence is an element of the offence itself or an act of violence associated with the offence. This clarifies questions raised by Magistrate Constanzo and clearly distances the court from a de facto endorsement of violence.

The concept of an indicative assessment is raised in new part 3A where a court can refer a person, if certain conditions are met, to the chief executive for an assessment as to whether or not proceedings are to continue before the Magistrates Court or be dealt with in the Drug Court. However, there are some provisions of section 12D that do pose real problems when dealing with both indicative assessments and later on in the bill. We all know that the Drug Court acts in essence when a person has either pleaded guilty or intends to plead guilty to an offence. However, there are still principles under which our criminal justice system operates and there are provisions, as I stated, in proposed section 12D that run contrary to those principles. Section 12D subsections (1), (2), (3) and (4), as I said, do run contrary to those principles, including the concept that the court may order a report or part of it not to be shown to the person the subject of the assessment. I would ask the Attorney to address that issue and other issues in her reply when time permits.

Consider that in the same legislation the lawyer acting on behalf of a person has a right to argue before the court its contents as to whether or not the matter should stay with the Magistrates Court or be transferred to the Drug Court. However, if the individual—that is, the defendant—is not able to see or be informed of the content of the report, how does the legal practitioner obtain instructions from the client with regard to his arguing to the court as to which court he does attend? Section 12D also removes the rule against hearsay and makes conclusive as correct the contents of the report. This is in essence a reversal of the onus of proof and, though I accept that a defendant may well have pleaded guilty or intends to enter a plea of guilty, the defendant still has the fundamental right to question documents referrable to him on issues such as penalty as they will be used, treatment as it will be referred to, and like matters. It is a dangerous precedent to set in these circumstances and again I would ask the Attorney to comment upon those matters. The exact same issue arises with regard to an assessment report as referred to in section 16, and in section 16B clauses similar to those in 12D exist. I again repeat my earlier comments.

Clause 27 amends section 20 of the act, increasing the number of offenders in effect the court can deal with by increasing the types of matters it can deal with based on the sentences being increased from three to four years provided both the prosecution and the defence agree. Can I also say before moving on to the issue of the Drugs Misuse Act that the Drug Court in my opinion has now reached a point where it does not need to be monitored on a regular basis. It is still a new creature. It still needs to develop. There will be ongoing problems with it, as with any human device. I do say this, however: do we now need to go to the next level? Are we now saying that the Drug Court is not in concrete but looks fairly set? What now do we do to cater for and help young people or people who are tied into the drug system?

What I would suggest is that we consider what has been termed in America re-entry courts, and that is courts for those who have been terminated from the program. It is a concept that, like the Drug Court system, commenced in the United States. The Connecticut re-entry court model included two major phases of treatment mirroring the correctional status of the offender, and they are referred to as the in-prison phase and the Drug Court phase. The in-prison treatment phase occurred in a correctional institution and the Drug Court phase of treatment occurred at re-entry into the community through an established Drug Court program.

The Delaware program cited a number of keys to success as including good case management that stays with the offender as they move from prison to a halfway house or other treatment program. Also ensuring that the offender does not float is essential, thereby reducing the chance of relapse or recidivism. Although no systemic evaluation has been conducted, preliminary results indicate a lowering of recidivism for those who complete the program during the 18 months following graduation from the program. Evaluations of re-entry courts in the United States are useful in this context as they involve actual experiences of combining imprisonment and a Drug Court program. The time spent in prison usually involves being in a therapeutic community, detoxification and involvement in whatever rehabilitation oriented resources are available. Results from various programs throughout the USA are encouraging, although its program varies even between counties in the same state and, as such, results must be interpreted cautiously.

One hurdle to overcome is how we get the offender to join a program once they have established or served their sentence. This can be almost impossible, but there are methods that may produce positive results. What we need to do is keep in mind that these participants volunteered or were placed in the program initially, so the attitude may already exist to continue with a second program to get them out of the cycle they are in. Queensland statistics prove that even those who are terminated from the Drug Court program have lower rates of recidivism than offenders who either refuse the program or were ineligible for the program and were dealt with by the normal criminal justice mechanisms.

Therefore the question and analysis become whether it is worthwhile investing the resources into terminates to possibly achieve a further drop in recidivism, or is it more worthwhile investing the same resources into other areas such as expanding the program for more people or increasing the availability of resources to the current participants. What the system is basically stating is this: there are people who, for whatever reason, did not complete the course initially, but those people at least had an initial mindset to make application or were placed into the courts. If there is a mechanism—and the Americans call it a re-entry court system—whereby these people can later be picked up, we may then find that those people do not fall back into their old habits. They do not then commit crimes associated with drug abuse—and these crimes are endemic across our community—and we therefore achieve, again looking at the objects contained in the bill, a saving across the whole system. If the Drug Court achieves a certain standard, as it appears it is doing, I think we now need to move the goal posts even further and contemplate how and who we pick up in the next sweep to try to protect their interests in the future and society's interests as well.

In addition, we could provide temporary accommodation, job training and counselling for these people to draw together those who have been terminated from the Drug Court program to further assist them in not falling back into their old habits. Naturally, these steps are not cost neutral, but it is one more step in the process of attaining the objects of the bill: to reduce drug dependency, to reduce criminal activity associated with drugs, to reduce the health risks associated with drugs, to promote the rehabilitation of persons and the integration into the community; and to reduce the load on resources in the court and prison systems. If those goals are attained we then find that our society and community must benefit directly and indirectly.

Other amendments contained within the bill amend section 23 by increasing the number of hours of community service to 240. Section 24(3) is amended by changing the time a person can be sent to prison for detoxification or assessment from seven days to the time contained in the terms of the new subsections (5) and (6). I ask the Attorney to detail the reasoning behind this change as the new time periods are well in excess of the seven days in the initial act.

Similarly, in section 32 the length of imprisonment and community service hours are varied for those who are not complying with their IDRO. The changes here also involve removing the word 'satisfactorily'. I again ask the Attorney to provide a background statement as to why that word has been removed from the existing bill.

Section 36 is amended so as to ensure time spent in custody is taken to be imprisonment already served when the court passes its final sentence. As I understand, no person who has completed the program has served time in prison as part of the final sentence. The Attorney may confirm that for me as well in her address.

The bill inserts the new section 36A directing the Drug Court magistrate to consider the views of a Drug Court team and an interested entity. A new section 39A allows relevant information to be exchanged about the offender. During the consideration in detail stage I will raise questions in relation to that section and new section 39C, which deals with personal information documents being released to a person who has sufficient interest in the document. I note the type of documents are those that are to be contained in a regulation, which will be passed at some future date. This is a concern to me as, at this point, there will be myriad documents going before the court drawn from different sources from different state government departments. I would ask the Attorney to address that issue in her reply to new section 39C. I will raise some questions in the consideration in detail stage.

Before we actually consider the amendments to the Drugs Misuse Act, I think it is interesting to look at some of the media reports regarding the John Tonge Centre at which these amendments are to be targeted. In an article on 16 March 2005 ABC News Online made this comment—

A magistrate has dismissed drugs charges against three Gold Coast men because of a nine-month delay in processing evidence at Brisbane's troubled John Tonge Forensic Centre. Southport magistrate Ron Kilner was told analysis of substances alleged to be drugs may not be available until September, after first being requested last June.

An article by Renee Viellaris appeared in the *Courier-Mail* on 23 March 2005. She writes—

A forensic science ministerial taskforce will oversee initiatives aimed at reducing workloads at the John Tonge Centre.

The committee—made up of stakeholders from Premier's, Justice, Health and Police departments—would ensure plans to outsource routine DNA evidence and second international forensic chemists were realised, Health Minister Gordon Nuttall told State Parliament yesterday.

She then states—

The review is expected to be finished in July, and is aimed at reassuring Queenslanders that the forensic science processes and practices are in line with other states and countries.

On 1 April 2005 in the *Gold Coast Bulletin* an article headed 'Forensic backlog brings bail' appeared. It states—

The backlog at Brisbane's John Tonge forensic centre could delay the trials of those accused of running Australia's first ecstasy drug lab, a Gold Coast court has heard.

Further, the article states—

Yesterday ...

a person—

... was granted bail, partly because of the huge backlog at the John Tonge Centre.

Finally, on 12 October 2005 an article by Emma Chalmers and Rosemary Odgers appeared in the *Courier-Mail* which states—

Under-resourcing and bad management at Brisbane's John Tonge Centre have contributed to a case backlog that will take millions of dollars and more than a year to fix, a damning report has found.

Queensland's leading science centre will now be overhauled at a cost of $6.3 million this year after the report revealed it was failing to address a mounting backlog of DNA testing for criminal cases.

I think we need to be very clear about the history of this bill. The bill exists only due to unrelenting pressure by those on this side of the House and the legal system that was buckling under the enormous weight—and still is—of a backlog of cases as a consequence of the funding for the John Tonge Centre falling way behind realistic requirements and causing adverse comment from the judiciary. Let us be very clear that this government has let the John Tonge Centre almost cease to exist. I again repeat: it has only been because of unrelenting pressure from those on this side of the House and the media that the government has finally woken up to the fact that the John Tonge Centre plays a linchpin role in the criminal justice system.

There are a number of amendments to the Drugs Misuse Act including the insertion of an offence of possession of relevant substances or other things—this is to capture those who supply chemicals and apparatus but do not engage in the production of the drug itself—and an offence of possession of a prohibited combination of items, which is yet to be set but will be by regulation; the removal of the need for testing sealed chemicals; and the removal of the need for the testing of equipment used to produce a dangerous drug.

Perhaps the most important element in this section of the bill is that relating to section 4, which defines the challenge notice and the prosecution information notice. In essence, if the police are going to utilise the provisions contained within the act they must within a certain period, as contained in new section 131B, provide what is called a prosecution information notice, which can be challenged by the defendant within 28 days by the giving by that person of a challenge notice. If the bill had simply said that, upon the giving of a notice, certain elements of the offence or certain equipment was not required to be tested and, in fact, were deemed to be part of the apparatus or part of the items used to produce the drug, we would have had a major problem with that. However, the safety in the bill is that the defendant does have the right to provide a challenge notice. Of course, that is exactly what the Drugs Misuse Act, when initially passed, was all about. That similar provision existed with regard to a defendant having to state that they actually disagreed with the analysis being verbally given by the prosecutor, and then it had to be tested. We do not oppose that because there is a balance struck between the two. In order for the police to utilise the section they must give the appropriate notice to the defendant. To offset that, the defendant must also give the appropriate notice back to the Commissioner of Police or to the executive of the health department. We have no concerns about that.

All in all, the bill provides, in our belief, a positive step forward with the Drug Court. It has achieved some wonderful results and it is to be endorsed. I again state that I would like some consideration now to be given to how we capture those people who were a part of the initial program of the Drug Court and who have fallen away for whatever reason. I wish some consideration to be given to how we can bring them back into mainstream society. The obligation does not end here; the obligation continues on. Once we reach a certain platform, we now need to establish what the new platform is and move forward.

The amendments to the Drugs Misuse Act are also, in my opinion, common sense. I hope they will help the backlog in the John Tonge Centre—time will tell. I am certain that the Attorney will report to the House on the glowing results as time goes by and trials fly through the court system. We will be supporting the bill but there will be some clauses that I will be debating in the consideration in detail stage.

I want to comment on the amendment that was circulated today in the House. I would also like to thank the Attorney's staff for forwarding to me the appropriate documentation, particularly the decision of Justice Byrne delivered on 9 December last year. I spoke to one of her staff members and she explained to me that the decision had come down only late last year and that this was the first opportunity to bring this legislation to the House. Having read the decision, it certainly appears fairly clear cut. Justice Byrne determined that he could have resort to extrinsic material to overcome what was a difficulty if the strict interpretation of the schedule was looked at.

Mrs Lavarch: Reprinting error.

Mr McARDLE: Yes, we will call it a reprinting error. That is exactly right. When I consider his dissection under the heading 'Resort to extrinsic material' at page 7, he seems to imply that it was a very unusual set of circumstances here that allowed him to resort to that material. He states that W and T contended very clearly that '7 ... omit' had a very strict and plain meaning. Justice Byrne appears to have gone in some depth into the history of this matter to find that, because it was so convoluted and so difficult, he could then resort to other material.

I also understand there is an appeal lodged on this matter which does give me some concern. I would be concerned that we would be endorsing an amendment of a matter that is currently before an appeals court. It appears to be interfering, not directly, not deliberately, with the due processes and that a party may well be prejudiced as a consequence thereof. I do not know whether that is the case—that is, that the appeal is on foot—nor do I know the grounds of the appeal and nor do I want to comment as to what the appeals court will finally determine. I would like the Attorney to pass comment on that. That is a real concern because I do not want to be agreeing to an amendment that effectively impacts upon a litigant currently before a court. It may well be that in those circumstances we cannot agree to the amendment. I leave it to the Attorney to comment on that matter when she makes her reply.