




Speech By
Michael Berkman

MEMBER FOR MAIWAR

Record of Proceedings, 20 April 2023

**POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION
AMENDMENT BILL 2022 AND THE POLICE POWERS AND RESPONSIBILITIES
AND OTHER LEGISLATION AMENDMENT BILL 2023**

 **Mr BERKMAN** (Maiwar—Grn) (12.51 pm): I rise to address both Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 and Police Powers and Responsibilities and Other Legislation Amendment Bill 2023—but I will start with the 2023 bill, which expands the police drug diversion scheme.

I have lost count how many times I have stood up in this place and said that the war on drugs has failed, so it is a welcome surprise to see those very words in the committee chair's foreword to the report on this bill. By expanding the diversion program to apply to all drugs, not just cannabis, the government appears to finally be listening to the evidence on this issue. As the committee chair stated, 'To continue doing the same thing and expecting a different result is not the smartest way forward in relation to this social issue.' Disappointingly, despite some positive steps away from the war on drugs, we still see a doubling down on the same failed punitive approaches in some aspects of this bill, but I will start with the good things.

The 2023 bill expands on the police drug diversion program from just cannabis to all drugs, as I said. The government has been surprisingly quiet about this, but it is actually more progressive than other jurisdictions in that it requires police to offer a warning for most initial minor drug possession offences before moving on to diversion for the second and third contacts. These changes are a long time coming. When we imported the so-called war on drugs from the US, it was already a failure. It was never genuinely designed to reduce drug use or its associated harms—and it never did.

People use drugs for a whole range of reasons and not all drug use is problematic. Most people—89 per cent according to QNADA—use drugs recreationally without developing dependency or harming others, yet this bill still applies a blanket approach of prohibition.

Some do struggle with substance misuse and addiction. QNADA notes problematic drug use is predicated on experiences of trauma and influenced by the social, cultural and structural determinants of health such as poverty. According to the Australian Institute of Health and Welfare, people with mental health conditions are 1.7 times more likely to use illicit drugs. Regardless of how or why someone uses drugs, they do not deserve to be treated like a criminal. People already dealing with substance abuse and addiction do not need further punishment.

The government has been at pains to stress that the 2023 bill does not decriminalise or legalise drugs. In this regard it does not do what the Queensland Productivity Commission and so many other experts have previously recommended. The eligibility criteria to access the diversion scheme is so tight that ironically some of the people most likely to need support will be excluded. That includes someone who commits a related indictable offence like burglary. Surely the fact that someone is going to such

lengths to obtain drugs indicates that they need support, not further criminalisation. They will already face separate charges for those other offences. Why should they also be punished for their drug use? This aspect does not make sense.

It also makes no sense to exclude people with a previous prison sentence for trafficking, supplying or producing drugs. This, like increasing the maximum trafficking sentence from 25 years to life, completely ignores the reality of drug use. Legal Aid Queensland pointed out that people who traffic drugs are themselves often experiencing drug addiction and feeding any profits back into that addiction rather than seeking to profit from others. You cannot separate out trafficking from use in the way the bill attempts to without disproportionately impacting vulnerable and disadvantaged people.

The threshold quantities that are proposed to be set by regulation are also completely divorced from reality. They are around half the trafficking thresholds set in the Drugs Misuse Act and, according to the Alcohol and Drug Foundation, out of line with the evidence around personal use amounts. They create a grey middle zone where the law acknowledges it is unlikely to be a trafficable quantity, but you cannot access the diversion program for personal use.

To his credit, the member for Burdekin, and more recently the member for Nanango, tried to understand this in their speeches using evidence around personal use amounts for meth. The member for Burdekin asked why someone would need to carry five days supply. To unpack this, if someone is using slightly higher amounts or using with others—which we know is safer than using alone—that could be or day or two supply. Maybe they do not want to be visiting their dealer every three days, especially when there is such great risk that they will be picked up by police and criminalised for their addiction.

Even if a person possesses amounts under the threshold and meets all the other eligibility criteria, all it would take is one cop's discretion to charge them rather than offer diversion. This is because police must reasonably believe that the drugs are for personal use before they apply the diversionary scheme. The Queensland Human Rights Commission raised concerns that this could mean the uneven application of the drug diversion scheme. We know it is more likely to be vulnerable people, poor people, First Nations people and other people of colour who will face harsher treatment under our criminal justice system. This discretionary element should be removed and the onus should be on police to prove commercial trafficking rather than on the possessor to prove personal use.


What is really concerning about this bill is that children could end up worse off than adults. While police will have to offer adults warning or a diversion, police will still be able to charge children on the first instance of possessing drugs. According to the Human Rights Commission, this contravenes the fundamental principle that young people in the criminal justice system should not be treated more harshly than adults. The government's response to the multiple submissions that raised concerns about this is that they do not want to lock children into the same processes as adults where lesser recourse may be more appropriate and available under the Youth Justice Act. I would appreciate if someone can explain this to me. They do not want to treat kids the same as adults, so instead they propose to treat them worse.

The Human Rights Commission, the Queensland Law Society and the Youth Advocacy Centre all recommended that the bill be amended so that a police officer can only exercise their discretion not to offer the initial warning and subsequent diversions if they are proceeding with a lesser recourse under the act. That seems pretty straightforward to me. The Youth Justice Act should also be amended so that a judge can dismiss charges if a child was not offered a drug diversion program when they should have been. Fundamentally, police should not be able to charge a child for possession in circumstances where they could not charge an adult. This government has, however, previously shown how little regard it has for the human rights of children who come into contact with police.

The 2023 bill also creates new aggravating circumstances offences so that someone can be liable for five years in prison for evading police if the offence is committed at night, where the offender uses or threatens violence, is armed or pretends to be armed, is in company, or damages or threatens to damage any property, or has previously been convicted of a range of offences around vehicle misuse. According to Legal Aid Queensland, these laws likely violate double jeopardy principles and the rehabilitation of offenders act. They will disproportionately impact children and will lead to "increased rates of detention, where conditions have been, at times, described as "cruel, inappropriate, and have served no rehabilitative effect"". Like the rest of the government's on-the-fly reforms targeted at young people, this will not deter offending. Even the committee report notes that existing significant penalties have failed to stop offending, and Queensland has the third highest recidivism rates in the country.

I will briefly address the provisions in the 2022 bill around reporting for child sex offences. I will start by saying there is no debate to be had around the need to protect children from sexual assault and abuse. I do hold concerns, though, that the current framework and this bill will still not do enough to achieve that.

The bill increases the reporting period for someone who has committed a sex offence against a child from five years to 10 years for the first reportable offence and then 10 years to 20 years for an offence committed while on reporting obligations. The Australian Institute of Criminology reports that recidivism amongst sex offenders is generally lower than for other types of crimes and, where an offender is not likely to reoffend, reporting orders can help ensure against recidivism without resorting to further imprisonment.

 **Mr BERKMAN** (Maiwar—Grn) (4.00 pm), continuing: As I was saying before the lunch adjournment, the Australian Institute of Criminology tells us that recidivism amongst sex offenders is generally lower than for other types of crimes, and where an offender is not likely to reoffend, reporting orders can help ensure against recidivism without resorting to further imprisonment. However, the institute also noted that the vast majority of sexual abuse goes unreported and unknown to police, such that reporting orders can only ever have an extremely limited ability to keep children and victims safe.

If we want children to be safer, then we need to increase resources not just for police but for community services, whether that be victim-survivor services that make it easier to seek help or housing services that make it easier for family members to leave abusive households. After sentencing and imprisonment, enormous resources will be dedicated to a small minority of known perpetrators, while victim-survivors will struggle to see a trauma counsellor or a social housing worker even once. The government needs to do better on these things.

In summing up on these two bills, I note again that the government has crammed so much into this cognate debate on two bills that deal with quite disparate issues. There is no way I could reasonably address all of those issues that I want to in my 10 minutes, so I will finish by reiterating my optimism that the 2023 bill represents a really important move towards commonsense drug laws. The new diversion scheme is more in line with international law, which views drug use as a health issue and acknowledges that prohibitionist notions of a drug-free world are simply unrealistic and we have to live in the real world if we want to be sensible legislators.

This government continues to criminalise drugs and funnel money into law enforcement while prevention, treatment and harm reduction are underfunded, and that is something that fundamentally has to change. I will finish, if I might, on a serendipitous high note, if you will pardon the pun, Madam Deputy Speaker, and wish you and everyone else in the chamber a happy 420.