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Criminal Assets Confiscation
(Prescribed Drug Offenders) Amendment Bill

Mr PEDERICK (Hammond) (16:40 :18): I rise to speak to the Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill 2014. In giving some background, I quote from the Labor Party's policy from 2010 in regard to its Serious Crime election policy which stated:

This proposal will amend the Criminal Assets Confiscation Act and Controlled Substances Act to target persistent or high-level drug offenders to provide for the total confiscation of the property of a 'Declared Drug Trafficker.'

This deterrent is an effective way of disrupting and hindering the activities of serious organised crime gangs by removing or reducing profits.

New powers will be given to the Director of Public Prosecutions to allow criminal drug dealers who commit three prescribed offences within a span of 10 years to be 'declared' a drug trafficker.

Under this proposal, which targets high level and major drug trafficking offenders, all of a convicted offender's property can be confiscated, whether or not it is established as unlawfully acquired and whether or not there is any level of proof about any property at all. Property and assets could also be restrained pending prosecution of matters before the court.

The legislation will attack repeat drug offenders. The offences that will attract the declaration if committed three or more times within a span of 10 years include:

- trafficking in controlled drugs;
- manufacture of controlled drugs for sale;
- sale of controlled precursor for the purpose of manufacture;
- cultivation of controlled plants for sale;
- sale of controlled plants; and
- any offence involving children and school zones.

Bills were introduced in the last parliament to implement that policy but were not passed as a result of Liberal and crossbench opposition in the other place. The bills went further than

the policy in that they allowed confiscation on a first offence and diverted confiscated funds away from the Victims of Crime fund.

The opposition, along with the support of the legal fraternity, had three major issues with the bills in regard to constitutionality, fairness, and where Labor's bills aimed to confiscate assets of certain drug offenders to the brink of bankruptcy, even if the person could prove that the assets were legally acquired and they were unrelated to crime, and also the impact on victims and the diversion of the proceeds away from victims of crime.

In the most recent election of 2014, the Labor Party said that it would continue to pursue the criminal asset confiscation changes and, 'In addition, we will give the court the power to prevent the offender from owning property for up to five years.' During the 2014 election—only a few months ago—Labor failed to make the bills an issue. As has been stated earlier in the house, in April of this year the High Court confirmed the constitutionality of the legislative scheme in the Attorney-General (NT) v Emmerson. In regard to the current 2014 bill, the Attorney-General tabled the Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill 2014 which confiscates assets of:

1. A convicted drug trafficker—repeat offender—convicted on a third (or more) offence for nominated offences within a period of 10 years.

2. A Convicted drug trafficker—major offender (whether repeat or not).

And a major offender is caught if he or she is convicted of a commercial drug offence. Legal stakeholders advise that the bill would catch much lower level offenders than in Western Australia.

3. absconding accused.

Interestingly, the bill does not cover the new elements in the 2014 policy. As I indicated, there are issues around the confiscation provisions and diversion of funds away from victims of crime. These remain a concern. Some of the things that should be looked at are providing the courts with the strength and capacity to exclude assets in the interests of justice, in particular to protect innocent third parties and dependents—and I will speak more about that in a moment—and limiting confiscation to repeat offenders and genuinely serious offenders.

During the committee stage we will probably flesh out what is estimated to be the number of offenders who are likely to be affected by this legislation if it passes the parliament, the amount of current confiscation receipts likely to be diverted from the Victims of Crime Fund and the estimated amount of other confiscation receipts.

In regard to drug trafficking and drug cultivation, I think that anything to do with drugs is a terrible crime on society and too many young people especially get tied up in it and a lot of it is because of the cost of getting a buzz, I guess. There have been discussions in this place and in committees about binge drinking and pre-loading. People pre-load with alcohol because it is cheaper to do that and go out at 1 or 2 in the morning than be out all night.

I would not know what the drugs on the street are worth but let's say for \$20 or \$30 they could buy a pill and that keeps them going for a few hours. Sadly, people get tied up in it for a range of reasons and I have heard some tragic cases where people have also got tied up in the dealing of these illicit drugs and they have no idea what they are in for apart from the fact that someone has met up with them out on the street and they think here is an easy dollar and when they get caught they do time, which is fair enough.

The Hon. J.R. Rau: You have to get caught with quite a bit before you are doing time, like kilos.

Mr PEDERICK: No, but what I am saying is that if you are doing drugs in any amount—but yes in regard to this, yes, as the Attorney suggests, they would have to be dealing in a reasonable amount. As I said before in my contribution, I have no sympathy with drug dealers and especially major drug dealers or major drug growers. Throughout my electorate—and the boundaries have changed significantly—and I have mentioned this before, a fair bit of Mallee country is suitable for growing marijuana and there have been some notable drug busts throughout the Mallee up towards the Riverland and obviously some other criminal activity where people have had a blue with a shotgun and there have been a couple of murders. Well, it would be more than a couple over an extended period of time.

Mrs Vlahos: I would say that is more than a blue.

Mr PEDERICK: Yes, well, more than a blue, exactly; a very serious argument. These are some of the things that happen because of people delving into something where they can make an easy dollar and the next thing is they wind up dead or severely injured. There are also cases where in a lot of that country people access groundwater, so you also get people who try to grow marijuana off the pipelines connected to the Taillem Bend-Keith pipeline.

They usually get found out. Because of the high price of water, people are monitoring their water use pretty heavily, and as soon as they see a meter going nuts it is either a leak or potentially, especially if you have a property with scrub on it, a drug crop growing out the back somewhere.

Ms Chapman interjecting:

Mr PEDERICK: Yes, exactly, and sometimes you need a bushfire to find out where they are. I can see the intent of the bill, but what concerns me a little about confiscation is the proof of ownership and what is mentioned in the bill about the person being in 'effective control'. I am assuming—and I am sure the Attorney will fill us in on the definition—that 'effective control' could mean someone who is looking after a property, leasing a property, renting a property, or they could be on a property and operating it without anyone even knowing they are there, which does happen in some of these cases. I am also concerned about what would happen if it were someone's child or even a grandchild, and this can happen sometimes, even in the leafy suburbs of Bragg. I am not trying to create a fight with my deputy leader.

Ms Chapman interjecting:

Mr PEDERICK: Yes, have a go. It was interesting that, not that long ago, during major storms in the eastern hills a tree went through the roof of a house in Glen Osmond. The neighbours were wondering why there were all these bright lights in the ceiling. There was quite a cultivation going on up there, I believe, but I am sure it happens all over the place.

In regard to ownership, I am concerned about the parents or grandparents who own the house. Obviously, people may live with their parents longer in life, and plenty of people still live with their parents until they are 30, 40, or even older, and there could be grandchildren—as if they are going to tell their parents or grandparents that they have a few lights switched on the ceiling that are keeping their crop growing. I am just hoping for a little bit of an explanation on how that will be dealt with, or will we find an unsatisfactory result where an innocent party has lost their house?

I just wonder how all other types of complex ownership could be dealt with. If this criminal legislation is passed, will criminal gangs work out complex ways of not owning property or of putting in some sort of trust arrangement and maybe not be a director but a beneficiary way down the bottom of the trustee deed? It could be a company ownership, with some very bogus listing of people involved. As I said, it could be a very minor owner. I am a bit concerned that the words 'effective control' could mean a whole range of things. I am not a lawyer, but I reckon the lawyers could have a field day working out what is 'effective control'. I would be very keen to hear the Attorney's answer in regard to that.

I can relate a story from about a decade ago, from memory, when we were leasing a farming property at Tintinara. I was in town trying to get some equipment fixed up in Tintinara, and I saw about 15 different police vehicles, police in flak vests and bullet-proof vests, and all sorts of things. I thought, 'What's going on here?' It does not happen every day in Tintinara, I can assure you. What had happened was that a bloke (who, sadly, passed away recently) had rented his farmhouse to these people and they had turned it into a methamphetamine lab—unbeknown to him, of course.

I just wonder how these people will be dealt with if this bill turns into an act and how they will be treated in the future. You might have no idea what is going on in your premises yet, obviously, these terrible human-destroying activities are taking place without your knowledge. Certainly, in the committee stage and in the summing up, I will be very keen to see how the Attorney-General addresses those concerns.