

PUBLIC HEALTH (MEDICINAL CANNABIS) BILL 2017

First Reading

Bill introduced on motion by Mr Luke Foley, read a first time and printed.

Second Reading

Mr LUKE FOLEY (Auburn) (10:43): I move:

That this bill be now read a second time.

This bill seeks to decriminalise the use and possession of cannabis for medical purposes. It is about restoring dignity to people with a terminal illness or serious medical condition who are seeking temporary relief from their pain and suffering. By passing this legislation, we can remove unnecessary hurdles for sufferers of terminal and chronic illnesses.

Seeking respite from relentless and unwavering illness should not be a criminal offence. It should be met with our sympathy and support. If we have the ability to relieve someone's pain and suffering then we should do it. We know that for some people with terminal illnesses and very serious illnesses, medicinal cannabis is the only effective form of pain relief. They should not be treated as criminals under our legal system.

If those opposite sincerely believe in medicinal cannabis, they will vote for this bill—because it is time to act. The bill adopts key recommendations of the New South Wales Legislative Council inquiry into the use of cannabis for medicinal purposes. The recommendations received unanimous support from five political parties.

I turn now to the details of the bill. The purpose of the bill is to protect medicinal cannabis users, and their carers, from liability under the criminal laws of this State. Recommendation 2 of the Legislative Council report urged:

That the NSW Government introduce an amendment to the Drug Misuse and Trafficking Act 1985 to add a complete defence to the use and possession of cannabis, so as to cover the authorised medical use of cannabis by patients with terminal illness and those who have moved from HIV infection to AIDS. The features of this system would include:

provision of a complete defence from arrest and prosecution for the use of cannabis and possession of up to 15 grams of dry cannabis or equivalent amounts of other cannabis products, and equipment for the administration of cannabis, by the patient;

provision of a complete defence from arrest and prosecution for the possession and supply of up to 15 grams of dry cannabis or equivalent amounts of other cannabis products, and equipment for the administration of cannabis, by the patient's carer;

that the defence be restricted to persons listed on a register of 'authorised cannabis patients and carers', with eligibility contingent upon certification by the patient's treating specialist medical practitioner that the patient is diagnosed with a specified condition;

the defence would only apply where the use and supply of cannabis does not occur in a public place; and

a review of the amendment commence within three years of the date of commencement.

This recommendation responded to the compelling evidence given to the committee.

While the recommendation was limited to benefiting those with a terminal illness, this bill also extends to those with a serious medical condition. Since the committee's report was delivered in 2013, the evidence from those suffering chronic pain that is unable to be treated by conventional medicine, or where the side effects of conventional medicine seriously compromise quality of life, has convinced me and the NSW Labor Opposition that we need to go further to provide more options for pain management. There is one other departure from that recommendation which I will outline later in this speech.

Part 1 of the bill provides the key building blocks for the scheme we seek to create. Clause 3 sets out the definitions used in the legislation, which are aligned with those in the Drug Misuse and Trafficking Act 1985. The central definition is what is meant by the term "cannabis". It is defined as "cannabis leaf, cannabis oil, cannabis resin; a preparation, admixture, extract of other substance containing any proportion of cannabis leaf, oil or resin; or a substance declared by the regulations to be cannabis".

The regulations may also exclude any substance from being "cannabis" for the purposes of the legislation. This is a safety valve, should it be needed, to guard against the use of artificial substances or compounds not presently contemplated as being cannabis, which do not have the beneficial effects and which may constitute a danger to those who consume or use the material.

Clause 4 defines "terminal" or "serious medical condition". This is central to the scheme since, to be eligible to be registered as a medicinal user of cannabis, a person must suffer from a terminal or serious illness. Reflecting the deliberation of the Legislative Council committee, the bill defines a terminal illness as an illness or condition that is likely to result in death in a reasonably foreseeable period. Serious illness is defined to be a serious illness or condition that is likely to result, and to continue to result, in a significant reduction in the affected person's quality of life, whether that is from the symptoms of the illness or condition or from its treatment.

These are, I believe, common-sense definitions, able to be readily understood and accepted by laypersons and experts alike. The definitions are, if you like, a narrative gateway into the system of medicinal cannabis use. If people suffer an illness or condition as defined, then they can seek registration under part 2 of this bill. That part sets out a detailed regime for registration that, at its heart, requires a person to have a medical certificate certifying that they suffer from the terminal or serious illness as claimed.

Outside terminal conditions, there will need to be a judgment formed by the regulator, in this case the Secretary of the Department of Health in New South Wales, that the illness or condition does warrant the description of serious. To assist in this process and to provide a safeguard against an overly bureaucratic approach, clause 4 (2) sets out a range of conditions that are for the purposes of this legislation serious. They are: severe intractable epilepsy, human immunodeficiency virus (HIV), motor neurone disease, multiple sclerosis, the neurological disorder known as stiff person syndrome, severe and treatment-resistant nausea and vomiting due to chemotherapy, or pain associated with cancer, or neuropathic pain.

These conditions have been chosen, in part based upon the evidence to the Legislative Council inquiry, but also from dialogue with sufferers of chronic or permanent conditions for which traditional, Western pharmaceutical medical care is not able to adequately provide relief, at least not without other negative consequences. This provision also enables further conditions to be declared to be a terminal or serious illness by regulation.

As I have already mentioned, the bill will achieve its aims by establishing, by law, a registration scheme for medicinal users of cannabis and their carers. This is drawn from recommendation 3 of the Legislative Council Select Committee report which provided, relevantly:

That the NSW Ministry of Health establish and administer a register of 'authorised cannabis patients and carers' certified by the patient's treating specialist medical practitioner and issue patients and carers on this register with a photo identity card verifying that they qualify for exemption from arrest and prosecution.

While we understand that the Health Department is currently undertaking such a process administratively, we do not know what safeguards are in place or the conditions that are put upon any such registration. Because the registration is intended to protect persons from the application of the criminal law, it must be regulated openly and by law. Very importantly, we do not think it satisfactory to have any scheme in this area dependent upon police officers being asked simply to not enforce the existing law by the Executive Government. At its heart, such an approach is anti-democratic and dangerous. Laws must be properly enforced. If the law is no good, or outdated, or does not meet community expectations and needs, let us have the courage and honesty to say so—and to change the law.

Under Part 2 of the bill, the health secretary is empowered to register a person as a medicinal user of cannabis, or a carer of a registered medicinal user of cannabis. The body of the arrangement is found in clause 5. Any application for registration as a medicinal user must also be accompanied by a medical certificate certifying as to the terminal or serious medical condition suffered by the person. Any application for registration as a medicinal user of cannabis or carer of a registered medicinal user of cannabis must be in the approved form and be accompanied by the required proof of identity. To be able to be registered as a medicinal user, the applicant must have a terminal or serious medical condition as defined, have their principal place of residence in New South Wales, and meet any other requirements in the regulations, and not otherwise be disqualified from registration.

A person may be registered as a carer only if they have the care of, or are assisting in the care of, a person who is a registered medicinal user of cannabis, and the registered medicinal user of cannabis consents to registration of the person as their carer. A carer's principal place of residence must also be in New South Wales, and they must meet any other requirement set out in the regulations, and not otherwise be disqualified from registration. An application may be made on behalf of a child by the parents or guardians of the child. Registration as a medicinal user of cannabis, or carer of a medicinal user of cannabis, remains in force for a period set out in the regulations, and may be renewed.

There is also a regime, found in clause 6, for the cancellation of any registration. The health secretary may cancel a person's registration as a medicinal user or carer if satisfied that the registration was obtained improperly, or the person is not eligible to be registered as a medicinal user or carer, or the person has committed more than one offence against this Act or the regulations. Other grounds for cancellation may also be provided for in the regulations. Before the Secretary of the Ministry of Health takes any action, he or she must provide notice to the person or, in the case of a child, the guardian, providing the reasons and allowing at least 14 days to make submissions in relation to the proposed cancellation. The health secretary must cancel any registration if application is made by a registered medicinal cannabis user for that cancellation. Clause 7 provides a regime for the inspection of any registration and the return of any certificate.

The bill before this House will also permit the creation of a lawful supply chain of medicinal cannabis, something the Legislative Council committee was not able to definitively deal with, given the legal complexity involved and the time constraints under which their inquiry took place. However, it is worth noting that the committee did not ignore this crucial aspect. Recommendation 4 provided:

That the NSW Ministry of Health and Department of Attorney General and Justice give further and detailed consideration to the issues surrounding lawful supply of crude cannabis products for medical purposes.

It is unsatisfactory, to say the least, that this appears to not have occurred in the more than three years since that inquiry reported to the Parliament. While I note the extensive measures enacted under similar legislation in both Victoria and Queensland, the sheer volume of the bills

considered by those Parliaments discloses the legal complexity involved in making this idea a practical reality. To achieve the same in this State would involve extensive discussions with multiple agencies, both here and at Commonwealth level, and amendments to literally dozens of different pieces of legislation. Victoria only includes severe intractable childhood epilepsy at this stage, with other conditions to be added in the future. Queensland does not list conditions but leaves it to the individual medical practitioner to decide whether cannabis might help.

The approach we take in this bill is a simple, facilitative measure found in part 3, clause 8 which will enable the State to establish a scheme for authorising the activities needed to create a lawful supply chain. This will include the cultivation and harvesting of cannabis plants; the manufacture or production of cannabis; as well as the storing and supplying of cannabis. The regulations will also permit the creation of a scheme for the granting of any necessary licences, permits or other authorities for the activities, including requirements for criminal record checks or other eligibility requirements that are determined as necessary and prudent, the imposition, variation or revocation of conditions of licences, permits or other authorities. This will extend also to provision for the suspension or cancellation of any licence, permit or other authority.

The activities that a registered user of medicinal cannabis is lawfully able to engage in, and the activities lawfully permitted to a carer, are set out in Part 4, clause 9. The provision will permit the administration of cannabis by a registered user to himself or herself, and the administration, or assistance in the administration, of cannabis by a carer to the registered medicinal user. It will also allow registered users and carers to possess cannabis, and equipment for use in the administration of cannabis.

Clause 9 subclauses (1) (c) and (2) (c) will permit registered users and carers to also manufacture or produce cannabis by making a preparation or admixture, either at the user's principal place of residence or at the carer's principal place of residence.

In addition, it will permit registered carers to supply cannabis and equipment for use in the administration of cannabis, to the registered medicinal user. Each of these activities are made lawful only to relieve a registered user's terminal or serious medical condition, and only to the extent it is authorised by a licence, permit or other authority under the legislation or regulations.

Clause 9 (4), together with schedules 1 and 2 to the bill, ensures the effectiveness of the regime provided for in this legislation is not adversely impacted by existing criminal law. Clause 9 (4) ensures that neither the Drug Misuse and Trafficking Act 1985 nor the Poisons and Therapeutic Goods Act 1966 overrides any aspect of this law. Schedule 1 makes the necessary amendment to the Drug Misuse and Trafficking Act 1985, and schedule 2 amends the Poisons and Therapeutic Goods Act 1966. Importantly, nothing in the bill excuses a registered medicinal user for any driving or other offence committed while under the influence of cannabis. Part 5 contains the offences and penalties.

Clause 10 provides that medicinal cannabis may not be administered by a registered user to him or herself or by a carer to a registered user in a public place. "Public place" is defined in clause 3 to mean a place where members of the public are lawfully entitled, invited or permitted to be present in their capacity as members of the public, whether conditionally or unconditionally. This non-technical and commonsense definition encapsulates the intention of the Legislative Council committee report.

Clause 11 sets out the limits of cannabis that may be lawfully possessed. A registered medicinal user, or registered carer, must not possess more than 15 grams of cannabis leaf. The Legislative Council committee recommended that registration would make a person who is relevantly ill eligible to possess up to 15 grams of dry cannabis or equivalent amounts of other cannabis products. This amount was chosen because, as it noted in chapter 2 of the report, individuals in possession of up to 15 grams of dry cannabis—at least as at 2013—were able to be subject to the Cannabis Cautioning Scheme. This bill adopts that limit and also provides, in terms of the other equivalent amounts of cannabis in other forms, that a registered user or carer may possess up to 1

gram of cannabis oil and 2.5 grams of cannabis resin. The penalty for breach of these provisions is up to 15 penalty units, or \$1,650.

I am very conscious that the amounts set, both in the Legislative Council committee report and this bill, are relatively small. I am also aware, from conversations with users of medicinal cannabis and their carers—and particularly with the entirely remarkable Lucy Haslam—that in many cases the amounts set out are inadequate to the need being faced by those with terminal and other serious conditions. So that we may continue the conversation about what will meet those needs, and to provide the necessary flexibility, clause 11 explicitly provides that the regulations made under the legislation may authorise the possession of "other amounts" of cannabis leaf, oil and resin.

Part 6 provides for the enforcement of the legislation. Clause 12 incorporates into the bill part 8 of the Public Health Act 2010, and provides that public health authorised officers can exercise their powers under that Act to administer and enforce this legislation. Clause 13 provides for the health secretary to order the surrender or destruction of any cannabis where the registration of a registered medicinal cannabis user or carer, or any licence, permit or other authority is suspended or cancelled. A penalty of up to \$2,200 will apply for any breach of this part. As with other enactments and as foreshadowed earlier in my speech, regulations will be able to be made under this law that flesh out important aspects of the operation of the proposed scheme.

Clause 15 provides for a review of the legislation to determine whether the policy objectives remain valid, and whether the terms of the law remain appropriate for securing those objectives. While most reviews of this kind take place after five years of a law being in operation, consistent with recommendation No. 3 of the Legislative Council report and reflective of its novel approach, this bill provides for a review to be undertaken as soon as possible after three years.

I urge members opposite to vote in favour of this legislation in order to alleviate the pain and suffering of so many of our fellow citizens. I cannot justify treating like criminals people who are facing terminal or extremely serious illnesses who are looking for pain relief. People who are suffering so much already should not also have to live in fear of being charged. We should not treat their parents or carers, who are simply seeking to help their loved one, like criminals. I have spoken to parents who are concerned that when they access a small amount of cannabis to relieve their child's suffering they face the possibility of criminal charges being laid. A parent buying a small amount of cannabis for a child with severe epilepsy should never be treated as a criminal. Let us do the right thing here, and let us do it now. I commend the bill to the House, and I urge those opposite to support it. It is long overdue.

Debate adjourned.

The ASSISTANT SPEAKER: General Business Notices of Motions (for Bills) having concluded, the House will now consider General Business Orders of the Day (for Bills).