

House of Representatives

Supplementary Order Paper

Wednesday, 28 November 2018

Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill

Proposed amendment

Greg O'Connor, in Committee, to move the following amendment:

Clause 4

Replace *clause 4* (page 1, lines 10 and 11) with:

4 Section 70 amended (Offences relating to psychoactive substance that is not approved product)

In section 70(3), replace paragraph (a) with:

- (a) in the case of an individual,—
 - (i) to a term of imprisonment not exceeding 8 years; and
 - (ii) when sentencing under **subparagraph (i)**, the court must have particular regard to the mental capabilities and degree of responsibility of the offender, including—
 - (A) the family background of the offender:
 - (B) the social background of the offender:
 - (C) the educational background of the offender:
 - (D) the cultural background of the offender:
 - (E) the intellectual capabilities of the offender:

Explanatory note

This Supplementary Order Paper replaces *clause 4* of the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill, which amends section 70 of the Psychoactive Substances Act 2013.

This addresses the issue of sentencing guidance for judges by recognising that in many cases a high penalty will not serve any useful purpose in terms of deterrence, rehabilitation, or reintegration. In some cases, the conduct of the offender will be heavily influenced by the fact that, due to deeply embedded predispositions, they lack judgment and a degree of self-control, and may make poor decisions. This may be due to limited mental capability and diminished responsibility of the offender due to family, social, educational, and cultural background. Accordingly, under this amendment the court will be able to reserve very high sentences for those exceedingly rare cases where it may serve some useful purpose.

The deaths and harm caused by synthetic drugs are extremely disturbing to the public, and our legislation must reflect this level of concern. However, in many cases the people supplying these substances are themselves being victimised by others higher up the supply chain. In many cases the low-level suppliers will have limited capacity, possibly being of low intelligence, mentally unwell, or having a background that makes discerning and following a correct course of conduct more difficult. Such matters need to be taken into account in sentencing.