

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon KATE DOUST: This is a bill that we have spent some time on, and I think it is important that all members have had the opportunity to express a view and articulate the issue of graffiti in their electorates, and to also put forward some of their concerns about this legislation. I think that has been very well done. It has been very interesting to see such an array of members getting up in the chamber. We do not always have an extensive debate on all pieces of legislation, and I think it is healthy that members afford themselves that opportunity. I am pleased to be able to make a few further comments as we go through the committee stage.

I listened with great interest to the comments made by the parliamentary secretary in his very lengthy reply tonight, as a result of which, perhaps, we will sit very late tonight. Some of us have been parliamentary secretaries and ministers in another part of our lives. It is always a very interesting learning curve when one is dealing with legislation, and sometimes it is interesting how one responds to and treats matters raised by members. The parliamentary secretary adopted a very interesting tone tonight in his response. The member will come to learn in the very lengthy time that I suspect he will spend in this chamber that debate will vary according to the different bills debated. In my eight or nine years here, when I sat on the other side of the chamber it was not uncommon for every single member of the opposition to get up and talk for his or her full time on every bill. That is something they were fully entitled to do, and members should be encouraged to do that if they wish to do so. It is pretty abysmal on the part of the parliamentary secretary to criticise people for wanting to express their view because it is not convenient for his time management of the bill. I hope that the member takes that on board and accepts it as part of his learning curve. Opposition members will take as long as they need to take when dealing with legislation, and we will raise whatever matters are appropriate to raise and seek the responses that we want.

Hon Norman Moore: I thought he provided a thorough response.

Hon KATE DOUST: It was very thorough. I know that the Leader of the House has an issue with tone as well. Perhaps there is a Liberal training school about how to treat people with condescension, because that was fairly evident tonight! The Leader of the House needs to attend an anger management program because he has serious issues, and the older he gets the worse he gets.

The CHAIRMAN: Order, members! We are getting off the track a little here. I remind members that we have sought to go beyond 10 o'clock. At this rate, who knows when we might finish. I ask members to stay on track, please.

Hon KATE DOUST: The Chairman is right, and he is very good at keeping us on track.

Clause 1 provides us with an opportunity to talk about the detail of the bill and perhaps how it could be improved. A number of matters were raised during the debate, and I note that Hon Giz Watson has an amendment in her name to a later part of this bill. It is a very good amendment and it is relevant because it deals with matters canvassed by a number of members about the educational aspect and the potential to prevent people from accessing art supplies. I note that the parliamentary secretary has already said that he will not support that amendment, but it will be very interesting to have that debate. I look forward to Hon Giz Watson explaining to us how she has arrived at that particular amendment, and the origins of that amendment. It is something we look forward to supporting.

This is important legislation and we have all acknowledged the dreadful implications for our community and the level of damage that is inflicted upon both domestic and commercial property by graffiti. It is a scar on our community and measures should be put in place to deal with it. Whilst the opposition supports this bill, it has raised concerns about the extent of the penalties that this government has put into the bill. I know that the parliamentary secretary commented about that. However, we are seeing a pattern emerge throughout a range of legislation whereby very steep penalties are being imposed for issues that could be treated with a different remedy or activity, or with education. Every time I turn on the television these days I find that this government is making another law and order announcement about some amendment to the Criminal Code that will impose some new penalty upon us for a range of activities.

Hon Michael Mischin: Only if you commit a crime!

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon KATE DOUST: If people do the crime, I do not have a problem with them doing the time or incurring the financial penalty. I am concerned about the extent of the penalty. I am concerned that these penalties are building and building. At this very early stage I am concerned to what extent this government will go in modifying the community's behaviour to reach the outcome that it wants. From listening to talkback radio, I am aware that the community is starting to wake up and to react to the measures put in place by this government.

This bill is a bandaid approach. It is not dealing with some of those issues that could be tackled at the source, which I referred to. There is nothing in any of these types of bills and no discussion about how we will change people's behaviours and attitudes at the early stages by supporting the family, by role modelling or by providing activities in the community. I do not know whether tonight is the night that we have the discussion about how we deal with young people in the community. Perhaps this issue of graffiti is simply their way of sending us a message that things are not as they should be and there is not enough to engage them, and they are simply expressing themselves.

This legislation could have been better. The government has made a knee-jerk reaction, and in its eagerness to deal with an election commitment has cobbled this bill together and tried to rush it through. I think that there are concerns about the bill, and they have been demonstrated to us—late I must say, unfortunately. A lot of young people have emailed and written to us about their concerns about accessing implements that they need either for their study or for their private activities as artists. I noticed that when the parliamentary secretary referred to a rally or an event outside Parliament, he was quite disparaging of it. I saw part of that, even though I did not have the opportunity to go down to it. They were not radical people. There were not outrageous. Most of them were young children—primary school age children and teenage children who were at tables that had papers and paint and a range of implements that they were using to draw and paint.

Hon Michael Mischin: Spray-paint?

Hon KATE DOUST: I did not see any of that there. I thought they found a very interesting way to demonstrate how they felt about the proposed restrictions on them. I know that when I talked about this as an issue in the second reading debate in relation to the penalty that can be imposed if a graffiti implement is sold to a child, I referred to how sometimes people want to send their children to purchase materials for art for school. I know that Hon Liz Behjat said something along the lines that she would never send her child to do that; that was a dreadful thing to do! At some point, parents have to let their child become independent and do things for themselves.

Hon Liz Behjat: I did not say that. Go back to *Hansard* and read what I said.

Hon KATE DOUST: The member did say something similar to that, and I am happy to go back to *Hansard* to pick that up.

The CHAIRMAN: It is fairly difficult for me to hear, let alone *Hansard*. Take it a bit easy; take a deep breath!

Hon KATE DOUST: Whilst the opposition supports this bill and will continue to support it, we believe that things could have been done a little better. As we go through the various clauses of this bill, we will take the opportunity to seek further information or advice from the parliamentary secretary about the various elements of this bill, and perhaps we can have some discussion about some of the other elements. I have written down some points that I might take up. As we get into the proposed amendment in clause 4, I have some questions about that that might aid Hon Giz Watson.

I will not spend a lot of time on clause 1. The opposition supports the bill, and it is important that members have an opportunity to express their view. A very interesting array of views and experiences, and examples from the community, have been expressed about the difficulties associated with graffiti, both financially and also in some cases emotionally. It can be very difficult for people to come home and find that their house has been spray-painted with graffiti, or their business has been damaged by graffiti. I have had graffiti done to my office. It is very annoying. God knows why they bother to get onto the roof of the office to do it, but these things happen. However, rather than try to ram these types of bills through, some more thought needs to be given to the detail and to the long-term ramifications of this type of legislation. Also, more thought needs to be given to how we can reduce the incidence of graffiti in the first place. I know that the government has brought the Graffiti Taskforce back into operation. I know that grants are in place. However, in the programs that are available, I did not see any that involve young people so that their voice can be heard in determining how these issues can be dealt with. That is something that the government needs to pick up on. Rather than just impose this legislation on young people, the government should start to include young people.

During the second reading debate, a number of members raised the fact that the Commissioner for Children and Young People has not been consulted on this bill. I thought that was very interesting. At the time that we debated

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

the legislation for the establishment of a children's commissioner, the Liberal Party, which was then in opposition, and in particular Hon Barbara Scott, who was a passionate supporter of that legislation, was absolutely insistent that the Commissioner for Children and Young People be given an opportunity to review every piece of legislation that relates to children and young people and make an impact statement. That was the case not only during the process of that legislation going through the house, but also during the committee inquiry into that legislation. That committee inquiry, which involved Hon Giz Watson, Hon Barbara Scott and me, took about two years. It took a long time for that legislation to get through the house. That is one thing that Hon Barbara Scott was absolutely dogmatic about. I am sure that if Hon Barbara Scott were still in this chamber, she would be horrified that her party, which had purported to support her and to support that element of the legislation, is just ignoring it. I imagine that in due course we will start to see a very frustrated children's commissioner, because she will just be sidelined. She will not be able to have input into this very important legislation that clearly impacts on children and young people and on how they conduct themselves and how they can access certain materials. This legislation could have been improved upon by having that consultation and communication with the children's commissioner and allowing her to have input into this legislation. I am sure that would have been valuable. I am sure she would have been able to provide some advice on some of the issues that have been raised by members.

We will support clause 1. However, it is important that we talk about how some things could have been done differently to improve this piece of legislation.

Hon SUE ELLERY: I want to ask a question. At the end of the parliamentary secretary's second reading reply, I was distracted by a phone call. Graffiti is one of those crimes for which there is a low clearance rate. That is because the crime is often committed at night, and in places that are dark and hidden away. I thought I heard the parliamentary secretary make a comment towards the end of his response about how he is not anticipating that this legislation will of itself lead to any increase in the clearance rate. I might have misunderstood that, because I was taking a phone call. It is difficult to successfully catch people who commit graffiti offences. That is because of when and where it is done. That is why I think some of the debate that we have had about graffiti has been about the need to ensure that a law and order approach is not the only approach that we take. We need to do a lot more work with prevention. I am interested in whether I heard the parliamentary secretary correctly and whether he did confirm that it is not anticipated that the clearance or arrest rates will increase or change at all as a result of this legislation. My understanding is that there is a guesstimate that we will catch about 10 per cent of the people who commit graffiti offences. I am interested in the parliamentary secretary's views about whether there have been any projections about what effect this legislation is likely to have on the clearance rates for graffiti offences.

Hon MICHAEL MISCHIN: This legislation in itself is not going to make any difference to the clearance rates. It does not address detection or investigation. It is simply about increasing the existing penalties by a relatively modest amount to bring them into line with the penalties in other jurisdictions for like offences. It is also about creating the discrete offence of selling graffiti implements to juveniles. The bill has nothing to say about prevention or detection, other than the sort of prevention that one would hope would flow from restricting the ready access to graffiti implements by criminals, or hopefully deterring offenders by means of increased penalties.

Hon GIZ WATSON: It is interesting to note that the second reading speech suggests that the purpose of this bill is to strengthen the deterrent effect of the law by increasing the existing statutory penalties, and to introduce new offences. The objective of this bill is also that it be a deterrent. I also note with interest that the parliamentary secretary said that this is a modest increase in the existing penalties. It is actually a doubling of the penalties. I reiterate that I do not think that the two-year maximum penalty for the offence of damage to property is a small penalty at all.

I also want to make a comment about the existing provisions that restrict the sale of spray cans. The parliamentary secretary said that he understands that that is to restrict shoplifting. It is actually not to do with restricting shoplifting at all. It is to do with the government's policy and code of conduct on preventing the misuse of volatile substances by people who are doing things such as sniffing them. It is not to do with shoplifting at all. That is why the voluntary code of conduct is in place. I understand that that code of conduct is operating fairly effectively, in that a lot of retailers keep spray cans in locked cabinets. We want to be clear on exactly what we are doing with the various provisions of this bill. I think the voluntary code of conduct is working well. However, we can probably do more in that regard.

The other point I want to make is that I have proposed an amendment to clause 4, which I will be speaking to when we get to that clause. That amendment deals with a matter that is fundamental to the position that was taken to the election by the Liberal Party in its policy statement titled "Tough on Graffiti". Therefore, the intent

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

to draft legislation in this area has already been clearly enunciated. I look forward to the more detailed debate on why this amendment should or should not be included in the bill, because it is absolutely in keeping with the policy intention that the Liberal Party took to the election. I thank a very vigilant young person who spotted that this was already part of the written policy that was taken to the election.

The other point I wanted to make on the short title is that there is a presumption that, if someone cannot sell graffiti implements of the nature described in this bill to a person under the age of 18, then surely if a person is under 18 years and wants these implements or material for legitimate artistic or educational purposes, he or she can go to the shop in the company of a responsible adult. I find this somewhat disturbing, considering that many young people aged 16 and 17 are independent and employed, and might not have anything to do with their parents, or want to have anything to do with their parents, let alone have them hold their hands while they go to the shops.

Hon KEN TRAVERS: I thank the parliamentary secretary for the response he gave to the second reading debate. It was useful in addressing many issues, but I am still trying to grapple with how this bill fits in to an overarching plan to deal with graffiti. This bill has two substantive clauses. The others are just standard clauses dealing with introduction, proclamation and commencement. This follows on from the questions from the Leader of the Opposition on how this fits in with the government's strategy. How does the government actually envisage it defeating graffiti? How does it fit within the strategy to address the causes of graffiti to see a reduction in the total amount of graffiti in the community? Listening to all the technical points that were made, I still did not get a sense of where these clauses will fit within an overarching strategy that will see a reduction in graffiti. I would be keen for the parliamentary secretary to provide an explanation of how this fits into the overall government policy that will lead to a reduction in graffiti.

Hon MICHAEL MISCHIN: I thought I had addressed that issue in the course of my reply to the second reading debate. This bill does not purport to solve the problem of graffiti. In its own modest way it hopes to limit ready access to the most commonly used implements by a section of the population that seems to form a large proportion of graffiti offenders. Otherwise, the bill will permit the courts in appropriate cases to impose greater penalties and will send a message to those courts that Parliament regards the offence as worse than one that carries a penalty of only 12 months' imprisonment or a fine of \$12 000. It will more closely reflect the sorts of penalties that are available for summary offences of this character in other states of Australia.

Hon KEN TRAVERS: I understand those two clauses, but I still do not see how this bill fits within the broader strategy that the government has in place. To take that a bit further, in his response the parliamentary secretary mentioned that he did not necessarily expect that increasing the penalty from 12 months to 24 months and from \$12 000 to \$24 000 would necessarily lead to an increase in the number of people facing imprisonment. Is that an accurate reflection of what the parliamentary secretary said?

Hon MICHAEL MISCHIN: No increase in penalty necessarily results in a greater level of imprisonment. Imprisonment is always a penalty of last resort, and so the same principles would tend to apply.

Hon Giz Watson: Unless it is mandatory.

Hon MICHAEL MISCHIN: Unless it is mandatory, but that is not being proposed in this legislation.

Hon Ken Travers: Do you expect to see an increase in the terms that will be served by those who are imprisoned?

Hon MICHAEL MISCHIN: In the cases that warrant imprisonment, the court now has the option to increase the terms. We would expect that, in deserving cases, the terms of imprisonment would be increased. That is the point of saying that Parliament now regards the offence as twice as serious as it did before.

Hon KATE DOUST: Just picking up on the issue of how this fits into the grander scheme of things, and talking about the penalties that have been increased in both imprisonment and fines, although the act of graffiti, as we have talked about, can be quite destructive and cause great angst for the community, it is not as though an individual has physically attacked another person or has broken property, stolen a car or shoplifted. I do not even know what the penalty for shoplifting is these days, although I should know. How was this penalty arrived at, and how does it fit into the range of offences and types of penalties? With the parliamentary secretary's experience, he should be able to provide that information fairly easily. I do not know whether we canvassed this, but I will let the parliamentary secretary answer that and then come back and ask the second part of the question in a moment.

Hon MICHAEL MISCHIN: I am not sure that there is a general standard that is uniform across offences for the level of penalties that are imposed in legislation. Shoplifting, I think, or stealing, carries seven years'

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

imprisonment, although there is a summary disposition that would allow for a lower penalty. If it is of any assistance, in Victoria under the Graffiti Prevention Act 2007, for the offence of marking graffiti, which is effectively tagging—the sort of offence that is covered under section 445 of the WA Criminal Code—the maximum penalty is two years' jail. Under the Crimes Act in the Australian Capital Territory, property damage of under \$1 000 in value carries a maximum penalty of \$5 000 or six months' jail or both. In New South Wales, under the Summary Offences Act, damaging property carries a maximum penalty of \$2 200 or six months' jail. Under the Crimes Act in that state, malicious damage carries a maximum penalty of five years' jail. There are other offences in New South Wales under local government and railway legislation. In Queensland under the Criminal Code Act, wilful damage to property carries a maximum penalty of five years' jail, or seven years' jail if the damage is done to an education facility. Under the Graffiti Control Act in South Australia, marking graffiti carries a maximum penalty of \$2 500 or six months' jail. For damaging property, where the damage exceeds \$30 000, the maximum penalty is 10 years' jail. There are a variety of offences across Australia and the level of penalties is all over the place. This one is hardly excessive in the circumstances. There is always the option for the police to charge people under section 444 of the Criminal Code if they really want to. That carries a penalty of 10 years' imprisonment and there is no limit to the fine that can be imposed.

Hon KEN TRAVERS: I appreciate the parliamentary secretary's comments. I found one of the penalties that he quoted interesting. A couple were about causing malicious damage but one of them was about causing wilful damage and it carried a five-year penalty. I would have thought that wilful damage would be more closely aligned to our section 444 of the Criminal Code.

Hon Michael Mischin: I expect that it is.

Hon KEN TRAVERS: That is about wilful damage. During the second reading reply, the parliamentary secretary said that people could be charged under section 444. Can the parliamentary secretary give us a better explanation of the circumstances in which he expects someone would be charged under section 444 for wilful damage and someone who would be charged under section 445? One of the key issues the parliamentary secretary raised was deterrence. Under section 444, the penalty for causing wilful damage is already a 10-year penalty. I would have thought that that was a very clear deterrent. I want to get an understanding of when a person would be charged for a graffiti offence under section 444, as opposed to section 445.

Hon MICHAEL MISCHIN: Perhaps I should have been a little clearer. A range of offending can cover the type of graffiti damage that we are talking about. Section 445 of the Criminal Code was originally section 80 of the Police Act. That was the most commonly used provision for the low-level damage that was caused. It is a summary offence and can be dealt with by a magistrate or the Children's Court in a relatively efficient fashion. Criminal damage that requires the wilful and unlawful destruction of property, if dealt with on an indictment, carries a penalty of 10 years' imprisonment unless there is a circumstance of racial aggravation, in which case the penalty is 14 years' imprisonment. That can also be dealt with summarily and the penalty, if the injury done does not exceed \$25 000, would be three years' imprisonment and a fine of \$36 000. At the lower level, we have section 445. All we are seeking to do with section 445 is increase the penalty to something that is a little more reasonable, in the government's view. Hopefully, it will deter a significant number of people from committing the offence. Whether it does so, I cannot guarantee. The point is that like any increase in a penalty, we would hope that people are deterred from committing the offence. To say that increasing penalties will not do anything or that the penalties themselves will not deter people because they act on the spur of the moment is entirely right. A lot of people will do that. However, if that is the argument against increasing penalties, we might as well remove the penalties from the Criminal Code altogether and simply have an offence and try to catch people and then let them go. That would not make any difference; in fact, it would encourage unlawful behaviour.

Hon KATE DOUST: I will pick up on the point about people having to pay a higher penalty or spend a longer term in jail. If a young person spends two years in jail, how will that remedy the situation? What is to stop the young person from tagging a place as soon as he gets out? How will putting someone in jail fix the problem? Has the government thought that through? What programs will be put in place to assist young people to rehabilitate themselves? I note that in the Liberal Party's election commitment there was some discussion about restorative justice being applied in this area. There was also some talk about graffiti artists having to clean up their graffiti. How will the government manage this issue beyond providing increased fines and imprisonment? Does the parliamentary secretary believe that this bill will fix the problem? I understand that he is saying this is not the be-all and end-all, but what can be done beyond that?

Hon MICHAEL MISCHIN: The bill that we are debating increases the penalty for an offence and it introduces a new offence. I do not propose to review government programs generally. I have outlined some of the things that were being done in that regard. The Office of Crime Prevention is involved in developing strategies all the time and in consulting with various stakeholders about how to deal with this and other problems. Simply

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

increasing penalties does not stop crime. If it did, we would not have any murders. Offenders who are released from prison, if they go to prison, will be dealt with in the same way as any other antisocial offenders. Other dispositions are available and are used in a majority of cases, including intensive supervision orders, referral to juvenile justice teams, suspended terms of imprisonment to hopefully deter people from committing other crimes, activating those terms of imprisonment, conditional release orders, and pecuniary penalties in the hope of hurting the offenders in their hip pocket so that they decide to not do these things again because it is too costly.

Hon KEN TRAVERS: I think that the parliamentary secretary misunderstood the issue that I raised. I am not opposed to setting appropriate penalties. My first point was raised in the context of how this provision relates to other jurisdictions. Having said that, I have no problem with Western Australia being ahead of the other jurisdictions if it will solve the problem. What I am more interested in is how this provision will fit within the hierarchy of offences. The parliamentary secretary was very helpful in outlining that. Under section 444 of the Criminal Code, the most serious wilful damage results in a 10-year penalty or, in circumstances of racial aggravation, a 14 year penalty. That is the absolute highest penalty that can be imposed. The next highest penalty is the 10-year penalty if the offender is charged on an indictment. The third highest penalty is a summary conviction. When the amount of damage does not exceed \$25 000, the penalty is three years' imprisonment and a fine of \$36 000. The penalty then drops down to section 445 offences, which concern damaging property and for which the penalty is 12 months' imprisonment and a fine of \$12 000. This legislation will increase those penalties to two years' imprisonment and a fine of \$24 000. That will increase the base level of the hierarchy of offences. What are the actual circumstances? I am keen to get some specifics from the parliamentary secretary about the circumstances for which someone who committed a graffiti offence would be charged under section 444 on indictment and in what circumstances would a person be charged under section 444 as a summary offence. What graffiti offences will be charged under section 445 as just damaging property?

Hon MICHAEL MISCHIN: In my experience, I would expect that the vast majority of cases involving tagging and the like would be charged under section 445 of the Criminal Code, although there would be the option of charging a person under section 444. Unless there is an election or the matter is otherwise so serious as to require a trial on indictment, it would be dealt with summarily by a magistrate. The difference in the two sections is that section 444 requires the element of wilful destruction of property as opposed to, under section 445—let me get this right—simply unlawfully destroying or damaging the property without another person's consent. The wilful aspect of it, the intentional damage and destruction of property, is what renders section 444 a more serious offence. Section 445, and its equivalent under the Police Act, was intended, as I understand it, to eliminate that necessity of proving wilfulness. As I understand it, the inclination to charge under section 445 would be encouraged by the absence of a need to prove that element of the offence and to overcome any arguments that really what an offender may be trying to do is not to destroy or damage property but actually to improve the property by making it look better by painting a mural on it or by writing his name on it in fancy letters. It being an offence with a lesser threshold for conviction, it is the sort of offence that carries, as a rule, a significantly lesser penalty than one that requires an intent as one of the elements of the offence, in the same way that manslaughter tends to carry a lesser penalty than an offence such as murder.

Hon KEN TRAVERS: That is why I am asking these questions. I want to get to the point where we can understand the hierarchy that will be in place. What we are doing is bringing the penalty for the offence of wilful destruction closer to that which is already there for a summary conviction. I seek the guidance of the parliamentary secretary as someone who, I am sure in his past careers, has been involved in both the prosecution of offenders and the determination of the section under which offences will be prosecuted. For the life of me I cannot see how someone who goes onto a train—proposed section 216 does not cover this—and does damage by scratching his tag on the windows from one end of a carriage to the other does not commit wilful damage. I cannot see how it can be defined as anything other than that. Is it a question then of the prosecution making a choice that the person will be charged under section 445 or would that person in those circumstances be charged under section 444? If that is the case, I am not quite sure why we need to increase the penalties for the offences if the person could already be charged under section 444 and face a penalty of three years' imprisonment. That is the section under which I would want him to be charged. It is not an argument not to increase the penalty, but I want to understand what we are actually doing here tonight.

Hon MICHAEL MISCHIN: Advice on the structure of offences was taken from the State Solicitor's Office. The recommendation was—for reasons I have already pointed out regarding the absence of a need to prove the requisite intent to destroy or damage property, or even know or believe that an offender's acts would destroy or damage property—that it is generally prudent to prosecute graffiti-type offenders under section 445. It was prudent to increase the penalty under section 445 rather than simply resort to charges under section 444, which would involve the proof of that additional element.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon KEN TRAVERS: The parliamentary secretary commented earlier that people could be charged under section 444. I accepted the argument that if somebody was painting a mural on a wall, he could argue that he was seeking to improve the wall. However, with tagging or scratching on trains and the like, I cannot understand how anyone could argue that he was not acting to cause wilful damage. If that is the case, can anybody be charged under section 444? How is that additional element proved to be able to charge someone under section 444?

Hon MICHAEL MISCHIN: I do not think it is fruitful to go into various combinations and permutations of available charges for any particular piece of criminal conduct. Suffice it to say that even for something like an assault, there are a variety of offences under the Criminal Code and other legislation perhaps that may cover those circumstances. The way in which one exercises one's prosecutorial discretion depends on the level of the evidence and what it is one is trying to achieve. Sometimes one may charge one offence as opposed to the other, simply through ease of proof. The majority of offences involving graffiti are charged under section 445. As I understand it, the circumstances that Hon Ken Travers has indicated could well result in a charge under section 444, and I am sure that under some circumstances people are charged under that, but that does not mean that one necessarily has to look at one section or the other. With the scratching offences, I entirely agree; I would be inclined to charge under section 444. It is a question of who decides to charge under what circumstances based on the evidence. The government has the responsibility of trying to frame offences in a way that will cover a variety of possibilities.

Hon Ken Travers: Are there any guidelines at the Director of Public Prosecutions' office about this?

Hon MICHAEL MISCHIN: No, it is a question of deciding on the evidence. An offence like this would not be charged by the DPP anyway; it would be charged by the police. It would be a summary prosecution.

Hon Ken Travers: Do they have any prosecution guidelines?

Hon MICHAEL MISCHIN: They do, but they would not descend to this level.

Hon SALLY TALBOT: I do not agree with the parliamentary secretary that the line of questioning being pursued by Hon Ken Travers is not a helpful one. I thought I might get to my feet now to make a couple of comments on the short title, perhaps to give the parliamentary secretary a little time to regroup his thoughts while Hon Ken Travers pursues his line of questioning.

Hon Simon O'Brien: He is a quivering wreck—I am sure not!

Hon SALLY TALBOT: I listened with some interest to the parliamentary secretary's response to the second reading debate. I am sorry that he did not find the debate more interesting. I thought that there were some startlingly original contributions, particularly from our side of the house. I thought the reference to Banksy was particularly illuminating.

Hon Ken Travers: I met someone who had a Banksy T-shirt the other day, and I knew who he was!

Hon SALLY TALBOT: I saw the same T-shirt. I am going to say this without sounding as if I am lecturing the parliamentary secretary, and I certainly do not intend to do that, but it did occur to me that the parliamentary secretary might spend a moment contemplating the difference between his previous career and the one he has now. In this place we have a responsibility to be discursive. We have a responsibility to go into the kind of detail that we are going into now, to make sure that we get legislation right. In his previous career he was dealing with an interpretation of something at quite a different stage of activity, but this is what we do in this place. I really think that he might have shown a little more grace in his summing up. It might have even moved us on a little more swiftly into this stage of proceedings. I will comment on the short title of the bill wearing my hat as shadow Minister for Youth. I have had correspondence from the Youth Affairs Council of Western Australia since we started the second reading debate in this place. I want to share it with the chamber. On receiving that letter I went back to the parliamentary secretary's second reading speech, and I noticed something that was not so apparent before we had that extended second reading debate in this place. In the second paragraph of the parliamentary secretary's second reading speech, he said —

While there may be graffiti of artistic merit, what this bill seeks to address is graffiti vandalism, which can be defined as the defacing of private and/or public property without consent from the property owner.

Sadly, graffiti vandalism is nothing new, but for as long as it has been around, so too have there been efforts from local community members and governments to rectify the problem.

In fact, the government drew this very distinction that we have been illustrating between graffiti of artistic merit and graffiti of vandalism. I will ask the parliamentary secretary to address the question of why this legislation is not being called the criminal code amendment (graffiti vandalism) bill. Surely that would have made the point

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

that the parliamentary secretary conceded in his second reading speech and which gets very close to the heart of the comments that members on this side of the chamber have been making.

In canvassing some of the clauses of this bill, I note that the same point can be made in relation to clause 4, in which proposed section 216(1) states —

Graffiti implement means any of these —

- (a) a can of spray paint;
- (b) a pen, marker pen, or similar implement ...

Proposed new section 216(2) indicates that a person who sells a graffiti implement to a child commits an offence. I ask the parliamentary secretary whether any consideration has been given to qualifying graffiti implement to somehow encapsulate the idea of an instrument used for graffiti vandalism rather than for graffiti that may be of artistic merit? I ask for a response to that before I make my second point.

Hon MICHAEL MISCHIN: Frankly, the name of the bill is largely irrelevant. It could have been called the criminal damage amendment bill. Whether it is called the graffiti vandalism bill or the graffiti bill is by the by. Once the amendments are passed, it will be subsumed in the Criminal Code anyway.

As to why the legislation does not provide that a person who sells a graffiti implement used for graffiti vandalism to a child commits an offence, with respect, that would be unworkable because at the time of sale the person who was selling the article would not know what it would be used for. It simply would not make sense to do it that way.

Hon SALLY TALBOT: That is an interesting use of the word “unworkable”. Surely part of what we try to do with all legislation that comes to this place is to make a law work in the way we want it to work. Therefore, we have to capture both the letter and the spirit of an intention to get the outcome that we want.

I take the parliamentary secretary’s point about the person who sells the implement not knowing whether a person is going to create a work of art or damage some property. Nevertheless, we are talking about the definition of something. If the parliamentary secretary’s comment in his second reading speech was more than lip-service to the fact that there is indeed a distinction between graffiti of artistic merit and graffiti vandalism, was consideration given to that? Was he taken aback, as he appeared to be, when the opposition raised these very real concerns?

Hon MICHAEL MISCHIN: I refer the member back to the second paragraph of the second reading speech. It reads —

While there may be graffiti of artistic merit, —

Which is simply a concession that there might be —

what this bill seeks to address is graffiti vandalism, which can be defined as the defacing of private and/or public property without consent from the property owner.

As I pointed out in the course of my reply, this could be a Banksy painted on someone’s wall, but if that person does not want it there, then it is vandalism.

Hon SALLY TALBOT: It might give some pause for thought, the possibility that a person can have a Banksy painted on their wall and not realise what it is.

Hon Michael Mischin: If a Banksy wants to paint on my wall, I would not want him to do it. If someone fancies themselves as a Banksy doing it and is trying to impress me —

Hon SALLY TALBOT: I take the parliamentary secretary’s point. Maybe we can come back to that as we move through the clauses.

I did rise primarily to put on record the comments made by the Youth Affairs Council of Western Australia. It makes the same point that was made earlier in the debate by Hon Kate Doust when she talked about the consultation that has gone into the preparation of this bill. This letter from the executive officer, Lisa Laschon, of YACWA is dated 1 October and it reads —

I understand the Western Australian Legislative Council is currently debating the Criminal Code Amendment (Graffiti) Bill 2009, which will seek to prevent young people from purchasing items referred to as ‘graffiti tools’ including markers and spray cans.

Being the peak body in Western Australia representing young people and the youth sector, the Youth Affairs Council of Western Australia (YACWA) strongly opposes the proposed legislation and believes

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

the new laws will have negligible impact on the incidence graffiti in our community an opinion that is supported by studies undertaken interstate and internationally in relation to legislation of this nature.

It is our experience that utilising punitive or restrictive laws to prevent young people from accessing implements that can be used for graffiti will have the opposite effect to that intended by the current Government, such restrictive laws entrench young people's desire to graffiti and have a diminutive deterrent effect.

What is of greatest concern to YACWA is that in the process of developing the Criminal Code Amendment (Graffiti) Bill 2009, there was no consultation with young people or the youth sector whatsoever. It is our opinion that when developing legislation that will directly impact on young people, it is vitally important to include young people within the process to ensure that young people feel connection and ownership of laws within their community.

Recently the Northern Territory Government enlisted a number of young people as part of a youth roundtable discussion and empowered the young participants to develop their NT Anti-Graffiti Policy, it was their view that by including young people at the beginning of the process, it was more likely that the new laws would resonate with young people in the Northern Territory community.

We believe that wider consultation is needed surrounding this issue and note that the Retail Traders' Association of Western Australia and a number of other industry groups also oppose or have reservation with the bill in its current form.

Lisa finishes the letter with the following paragraph —

We call on you to oppose the legislation and commit to working with young people, the youth sector, local government and retailers, toward a better more long term solution to the incidence of graffiti in Western Australia.

As we indicated throughout this debate, the Labor Party is not opposing the legislation because it recognises that the Liberal Party went to the election talking the talk on this.

Hon Giz Watson: It did not win the election, though.

Hon SALLY TALBOT: No, they did not win the election!

Hon Giz Watson: They've forgotten that.

Hon SALLY TALBOT: I thank Hon Giz Watson. She does not really need to remind me but that was a timely interjection. The Liberal Party certainly did not walk away with government in its own right. I am not sure whether the National Party had a position; I believe not.

Point of Order

Hon MICHAEL MISCHIN: This is really descending into a second reading debate again and those issues have all been canvassed before.

The CHAIRMAN: I am quite sure that the honourable member has no real intention of doing anything other than talking about how the formal content of the bill may be improved. If she is about to continue doing that, I am happy with that. I just remind her, though, of that particular issue.

Committee Resumed

Hon SALLY TALBOT: Of course I am indeed talking about how the formal content of the bill might be improved because I go directly to clause 4, noting that Hon Giz Watson has an amendment standing in her name. I relate clause 4 directly to the points made by the executive officer of the Youth Affairs Council of Western Australia about the failure to consult, and the fact that if, indeed, YACWA's analysis is right, we desperately need the amendment to clause 4. However, I want to hear at this stage of the consideration of the short title the parliamentary secretary's understanding of how he thinks he can present the bill in its current form. Does he discount these concerns or does he feel that they are addressed in a different way? It is a mystery to me and I would like that explained in this context.

Hon MICHAEL MISCHIN: I saw the letter from YACWA as well and on my analysis of it, apart from complaining that there was no consultation and that it purports to speak on behalf of all young people in the state, or the "youth sector", whatever that might be, it points out no specific issue or difficulty with the bill. YACWA claims that the Retail Traders' Association of WA and other industry groups oppose or have reservations about the bill, but YACWA has not provided any particulars of that. In fact, the letter provides no

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

supporting evidence or particulars of any problem with the legislation as framed. It certainly does not raise anything specifically about the proposed amendment to clause 4.

Hon SALLY TALBOT: What an extraordinary dismissal of one of the major stakeholders. I notice that the Minister for Youth has to leave the chamber on urgent parliamentary business. She may well want to see the parliamentary secretary outside to have a little chat to him. The very fact that the parliamentary secretary puts youth sector in quotes is alarming to me, let alone those astonishingly dismissive —

Point of Order

Hon MICHAEL MISCHIN: A letter has been quoted but I have not been directed to anything specific in it relating to the amendment that is being foreshadowed or anything in that letter that directly refers to the bill. With respect, this seems to be simply argumentative.

The CHAIRMAN: Members, I will give some direction to the house. I will quote from *Hansard* from some time ago just quickly, which states —

The short title debate does no more than give members the opportunity to range over the clauses of the Bill, foreshadow amendments and indicate, consistent with the policy of the Bill, how its formal content may be improved. It is not a vehicle for continuing debate on policy; rather, if members do not wish the Bill to proceed, the action they should follow is to vote to defeat clause 1 of the Bill as it stands.

I make mention of that particular direction and just hope that members can get, as I indicated some three-quarters of an hour ago, albeit that we are still on clause 1, back on track. I ask the honourable member to bear that in mind as she proceeds.

Committee Resumed

Hon SALLY TALBOT: I do not think there are any doubts. The parliamentary secretary says that he has seen this letter, but if he cannot see its relevance in talking about the content of the bill, specific clauses within this bill and how the bill itself might be improved, I just do not think he has read it properly. YACWA is talking —

Hon Michael Mischin interjected.

The CHAIRMAN: The member has the call.

Hon SALLY TALBOT: YACWA is talking about a bill that will seek to prevent young people from purchasing art tools that are referred to as graffiti tools. I relate that directly to clause 4 of the bill. I acknowledged that we are looking at some amendments and I asked for the parliamentary secretary's reaction to that. The other point I make is that YACWA very specifically talks about what it sees as a better way of achieving the objectives that the government says it has set itself.

Hon Ken Travers: It refers to how you could improve the policy of the bill.

Hon SALLY TALBOT: I thank Hon Ken Travers because YACWA is specifically talking about how the government might improve the policy objectives of the bill.

The CHAIRMAN: I will just reaffirm something; it is not perhaps so much how the policy may be improved but how its formal content may be improved. I think that may be slightly different from a policy statement, which I do not think the honourable member should be referring to.

Hon SALLY TALBOT: This is perhaps something that I do not need to prolong at this stage, but on behalf of YACWA I take serious offence to the minister's total dismissal of the fact that we could drive a truck through the distance between the content of this bill and the policy that the government says it espouses. I put on the record that I think YACWA has made a very positive contribution to the assessment of what the government is trying to do, and I give the government notice that tomorrow I shall be following up some of the extraordinarily dismissive tone and content of what the parliamentary secretary has said tonight.

Hon KEN TRAVERS: Within the policy of the bill, which clearly seeks to amend the Criminal Code to try to seek to reduce graffiti, I want to range across some of the clauses. During the parliamentary secretary's response to the second reading debate, he mentioned and in fact was good enough to table a copy of a letter that he had received from one of the Graphite Crew, whoever that is. In that letter it was suggested that Adelaide recently introduced an 18 years-plus policy, so I guess that is something very similar to clause 4 of this bill, as a result of which there had been an increase in graffiti-related vandalism since its introduction. I was wondering as part of the development of this legislation whether the government has done any research or analysis of the similar provisions around Australia and whether they have actually led to a reduction in graffiti or, as was claimed by the writer of the letter the parliamentary secretary tabled, an increase in graffiti. I am intrigued to know just what

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

level of detail and research the government has done on this bill and how it will actually address what I think is the policy of the bill—that is, to seek to decrease graffiti.

Hon MICHAEL MISCHIN: I am not aware of the extent of research into the incidence of graffiti since the introduction of like offences in South Australia. The allegation has been made by Mr Domahidy, presumably on the basis of his own observations, and I cannot comment on that.

Hon KEN TRAVERS: I heard the mutterings of the Minister for Transport when I first asked this question; he was saying something about this already being asked a number of times. That is absolutely not correct. This is the first time we have got to the issue of how the clauses in this bill will reduce graffiti. I am happy when we get to the more detailed discussion to ask how the aims of that specific clause will be addressed, but in terms of the short title I am keen to know on what research the government bases its belief that the clauses in this bill, particularly clause 4, will lead to a reduction in graffiti. From all the speeches we have heard, that is what the policy of the bill intends to achieve. I would have thought if a claim is made to the parliamentary secretary that in Adelaide a similar provision had led to an increase in graffiti, that is something he would seek to test and at least talk to the South Australian government and ask its opinion on whether that claim is correct. I thought that would be a fundamental issue, and it is not unreasonable to ask in this chamber what research has been done and on what basis the government believes this bill will decrease graffiti.

Hon SIMON O'BRIEN: It might help the chamber if I make some observations about the nature of a committee stage. In considering how the policy might be applied or finetuned the members are entering into a second reading debate. All of this is second reading debate. The member is inviting us to justify why we should bring in such a law. That is a direct reference to the second reading debate and to the policy of the bill, which was decided at the second reading vote a little while ago. Furthermore, we are addressing clause 1, not clause 4. It is within members' capacity, I respectfully submit to the committee of the whole, that they can refer to all sorts of sections at this stage, but to demand a detailed examination of clause 4 now is not appropriate. They do that at clause 4. The Chairman was right to give the ruling that he did, but I think it needs to be reinforced as to what clause 1 is all about. A member not long ago referred to the second reading speech. The member was taking apart the second reading speech. If that is not proof positive that we are revisiting the second reading debate, I do not know what is! The member claimed that the short title somehow did not match the meaning of the clauses in the second reading speech. Members need to understand that a debate on the short title, on clause 1, is not a debate about what the short title of the bill will be. The question that the Chairman has put before the committee is that clause 1 be agreed to, not that clause 1 stand as printed. What is at stake at the moment is an opportunity, if members decide after all that they want to defeat this bill, to vote against the short title. That is the option. It is not about the wording of the short title. If they want to argue about the name of the bill, that comes at the very end of the committee stage. Let us have no more nonsense about what this clause 1 debate is all about. It is not a rerun of the second reading debate and that is what some members are straying into. If members want to debate clauses until the cows come home, they should do it at the appropriate time. If they disagree with clause 1 now, then they have to understand what it is that they are disagreeing to. There is no option, I respectfully submit, for them to amend anything in the terms that they have outlined of clause 1. Their only option in view of what they have said is to oppose it.

The CHAIRMAN: I thank the honourable member for his remarks. I take on board the point that he makes about arguing in respect of the individual clauses, but I certainly would defend members' right to discuss how the formal content may be improved. I believe that that particular point has got to be made through the Chair. As I say, I take on board the minister's point about arguing the change in respect of the individual clauses. If I could direct Hon Ken Travers to focus his debate more on how the content may be improved, then we will have satisfied these requirements.

Hon KEN TRAVERS: If the minister had been listening —

Hon Simon O'Brien: Don't be patronising, you twit!

Withdrawal of Remark

The CHAIRMAN: Order! I find that an objectionable comment from the minister. Frustrated he may well be, but I would like him to withdraw that remark.

Hon SIMON O'BRIEN: I unreservedly withdraw.

Committee Resumed

Hon KEN TRAVERS: I was very clearly seeking to work out by canvassing all of the clauses—I am more than happy to get into the specifics of the operations and the mechanics of clause 4 when we get to it—at this point in the debate to get an understanding from the parliamentary secretary how that clause will operate. When we get to

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

clause 4 we can seek to improve the policy of the bill, which I would have thought is about seeking to decrease the incidence of graffiti by limiting the access to these products of people under 18. I will come to some further points in respect to that claim. I still want to put my question again and I want to see if I can get a response from the parliamentary secretary about what research was done and what comparisons have been made to assure the chamber of the aim of this legislation, and what I think is the clear intent of the chamber, by that clause; or, if not, when we get to that clause, we might seek to improve it by way of amendment. Until we get that explanation at this stage of debate, it is very hard so I would appreciate some comment from the parliamentary secretary about those claims and what research the government has based its expectation that this will lead to a reduction in graffiti.

Hon MICHAEL MISCHIN: The question seems to have changed from the initial one, which was a reference to South Australia.

Hon Ken Travers: That is part of the process, and I am happy to deal with that.

Hon MICHAEL MISCHIN: The member is expressing some surprise that an email correspondence that I received yesterday had not been investigated overnight with the South Australian authorities. I do not know whether Mr Domahidy is correct or not. I am not privy to the —

Hon Ken Travers: Would it concern you if he was?

Hon MICHAEL MISCHIN: I am not privy to the research that was conducted in the process of building up the policy of this bill.

Hon KEN TRAVERS: Well, that is a very dangerous answer to give, because often the response to that is that the parliamentary secretary will ask that the Chairman do leave the chair until the ringing of the bells so that the parliamentary secretary can go away and find out that policy information and that development of this bill. The parliamentary secretary is the representative of the government in this chamber. It is, therefore, legitimate for us to ask this question. The parliamentary secretary invited me to come back to the issue about the South Australian policy.

Hon Michael Mischin: I did not invite you to do that at all.

Hon KEN TRAVERS: Does it not concern the parliamentary secretary that if the claim about what has happened in South Australia is correct, the clause as it currently written will not achieve the aims of this legislation? I would have thought that the parliamentary secretary would have wanted to have that claim tested to see whether it is correct, or is the parliamentary secretary confident that it is not correct?

Hon MICHAEL MISCHIN: Am I being asked for my personal opinion on this subject?

Hon Kate Doust: You should have been briefed on what sort of research has been done.

Hon MICHAEL MISCHIN: I do not propose to descend into speculation on the basis of an email correspondence from someone.

Hon KATE DOUST: I have sat here and have been listening to this. Hon Ken Travers has been trying to work his way through these issues. I think this is very relevant to clause 1. I picked up on the comment made by Minister O'Brien, which I thought was rather amusing, given the amount of time he used to spend in committee and the various pathways he used to take us down when we were managing legislation.

Hon Simon O'Brien: I used to address the clause that was before the Chair.

Hon KATE DOUST: No, the minister did not! The minister was a shameless hussy. He never did that. The minister used to do all sorts of things. So, the minister should not dare to try to preach to us about how we should conduct our business here. We are doing our job, and we are being diligent.

Hon Simon O'Brien: I am not offended by that, Mr Chair.

Withdrawal of Remark

The DEPUTY CHAIRMAN (Hon Matt Benson-Lidholm): I will interrupt the member. I did correct the minister before. Much as that particular term may be used in certain circles around this particular place, it should not be used in here, and I would ask the member to likewise withdraw that particular comment.

Hon KATE DOUST: I do, Mr Chairman. The word slipped out. I will not call the minister a hussy again, Mr Chairman. I withdraw.

Committee Resumed

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon KEN TRAVERS: I will move on, and I may then try to come back to this issue. I want to make it very clear. I would have thought that everyone in this house would want to support legislation that will lead to a reduction in graffiti offences. We did that in supporting the second reading debate. We are now moving on to try to make sure that the specifics and the detail within the legislation will achieve that aim. I would have thought that when we are receiving claims about elements of similar legislation in other parts of Australia, that would be dealt with. It may assist the house if the parliamentary secretary would give an undertaking that he will go away and seek to get a better understanding of the policy of the bill, and that during the adoption of the committee report, or during the third reading debate, he will report that to the house, and at that point we will still have the option, if there is a serious problem with this legislation, of recommitting the bill and having the bill dealt with at that stage. I put that as a suggestion to the parliamentary secretary so that we can try to move this consideration forward, rather than get bogged down. It is not acceptable for the parliamentary secretary to say that he was not privy to the discussions. That is not an acceptable answer to this committee.

I might just let the parliamentary secretary get his advice from the Minister for Transport, but I want him to listen to my next question.

Hon Michael Mischin: Sorry. Did I miss something?

Hon KEN TRAVERS: I was waiting for the parliamentary secretary. I did not want to interrupt him in getting his advice from the Minister for Transport. I do not know whether the parliamentary secretary wants to respond to my first comment. I am happy to move on to my next comment. However, I do expect to get a response to the first point that I made. During the parliamentary secretary's response to the debate, he made the comment that by and large it is juveniles who commit graffiti offences. Am I correct in understanding that that is one of the comments that the parliamentary secretary made?

Hon Michael Mischin: They are certainly a major contributor to it, yes.

Hon KEN TRAVERS: Well, a major contributor, but my recollection—I wrote this down—is that the parliamentary secretary made the comment that by and large juveniles are the ones who are committing the graffiti offences. I just want to clarify that, because I then want to go on, if that is the case, into some further discussion about how we might improve the policy of the bill.

Hon Adele Farina interjected.

The DEPUTY CHAIRMAN: I think the member means the quality of content rather than the policy.

Hon MICHAEL MISCHIN: If I said that, I was in error. Certainly the perception among many is that juveniles are the major contributor. Judging from the figures available, it would appear to be largely adults.

Hon Kate Doust: Do you have those figures for tabling?

Hon MICHAEL MISCHIN: A significant proportion of the offenders are juveniles—certainly not an inconsiderable number.

Hon Kate Doust: I have not seen those figures. If the parliamentary secretary is able to table those figures, it would be of interest to us to see those figures.

Hon MICHAEL MISCHIN: I will get a copy made for the member.

Hon KEN TRAVERS: I appreciate that response, and that does address one of the issues. Perhaps I will leave that until we get into greater detail as we move through the clauses. I did think that was a strange comment, because the parliamentary secretary read a range of statistics on charges.

Hon Adele Farina: There were more adults than children

Hon KEN TRAVERS: Yes. Was that for people who were charged under section 445?

Hon MICHAEL MISCHIN: A number of charges have been laid under section 445, but of course they embrace all forms of damage, not necessarily graffiti damage. It is a breakdown of the number of offenders dealt with and the dispositions of those offenders.

Hon KEN TRAVERS: I asked that question because of the comments that the parliamentary secretary made about a company that had a self-imposed code of conduct. My understanding is that there is already a voluntary code of conduct with respect to spray cans. If the majority of offenders are over the age of 18, I want to know how the parliamentary secretary thinks that will operate. Perhaps I will leave that until we get to the specific details of clause 4. I just wanted to clarify that more adults are committing graffiti offences than juveniles. That probably answer the issues that I have at this stage before we move into the more specific detail.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon ADELE FARINA: I would like to go through these figures and get some clarification that these figures are for charges laid under section 445. My understanding is that when the parliamentary secretary read out these figures during the second reading speech, he was referring to graffiti offences. However, the parliamentary secretary said in answer to Hon Ken Travers that the figures that we have in front of us now may not be referring only to graffiti offences but may be referring to other property damage as well. It would be of great assistance if we could get some clarification about whether these figures refer to graffiti offences or any offence under section 445. The request I made during my second reading contribution was for figures on the number of offenders who had been charged with graffiti offences, and the component of those who were under the age of 18 years, or 18 years and over. I asked for those figures, but it does not appear that I have received them. It is very difficult to talk about the structure of this bill when we do not have that information. In fact, it is very difficult to understand how the government could have formed a decision to proceed with legislation that targets the selling of graffiti implements to people under the age of 18 when it does not have any data to suggest that that is where the problem is. Can the parliamentary secretary clarify whether the figures that we have been given relate to graffiti offences under section 445 or any offence?

Hon Michael Mischin: I already answered that question during the course of the second reading reply.

Hon ADELE FARINA: I listened to the second reading reply, and I understood that the parliamentary secretary was reading out figures in relation to graffiti offences. Does the parliamentary secretary want to put that on the record?

Hon MICHAEL MISCHIN: I made it quite clear at the time that section 445 embraces all forms of unlawful damage, and from the figures available it is not possible to say how many of those offences were for graffiti damage. These were offences under section 445, and it says so in the first paragraph of the document the member has in front of her.

Hon ADELE FARINA: On what basis did the government come to the conclusion that it needed to introduce this bill, which prevents the sale of graffiti implements to people under the age of 18, when the information that we have here would suggest that more offences are committed under section 445 by adults? In fact, the proportion is almost four to one.

Hon MICHAEL MISCHIN: I have dealt with that question.

Hon ADELE FARINA: I signal here under the short title my intention to raise some matters when we reach clause 4. I am a bit concerned about the structure of this bill and the fact is that there is a provision that makes it an offence for a person to sell a graffiti implement to a person under the age of 18, and the offence is committed by the person who sells the implement. I have here the Tobacco Products Control Act 2006, and I am interested in the structure of the bill before the chamber as a comparison. The Tobacco Products Control Act contains a warning provision. It requires the shop owner to display a warning so that customers and employees are aware that it is illegal to sell a tobacco product or smoking implement to a person who has not reached the age of 18 years. The government has not included a provision similar to that in the bill before the chamber. I would have thought that with a provision that includes an offence of selling a graffiti implement it would make sense to ensure that some sort of warning is displayed somewhere, particularly where 16-year-olds could actually be working as part-time shop assistants and may not be aware of the law. The employer may not have a very good induction or training program. It would seem to me that having a warning similar to that provided in the Tobacco Products Control Act 2006 would be a very sensible approach. I will raise this again when we get to clause 4, but it seems to me that there is a deficiency in this bill, and it could be better structured if that warning provision had been included.

I also refer to section 110 of the Tobacco Products Control Act 2006, which deals with the liability of employers. I am concerned that clause 4 of the bill before the house directs the offence to the person who sells the graffiti implement but does not place any onus of responsibility on the employer to ensure that the employee is aware that it is illegal to sell such an implement. In the other legislation there is a provision that the employer has some responsibility for that. The parliamentary secretary made the comment about vicarious liability, and I would like him to expand on that a bit further, because I am not too sure how it comes into effect in this case.

The Tobacco Products Control Act 2006 states at section 110 that if a person is charged with an offence under the act, the person's employer at the time the offence is alleged to have been committed may also be charged with an offence. It lists a number of provisions. I would have thought that if the government really wanted to ensure that this legislation was effective in delivering the government's policy outcome, it would have included a provision of this type in the bill before the house to tighten it up. In the absence of such a provision, a situation could arise in which an employer does not provide a proper induction for an employee. The employee who will fall foul of the legislation could be a minor of 16 years of age, yet the employer will get off scot-free. Surely there should be some responsibility on the employer as well.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

The tobacco legislation also provides a range of defences, including that an employer has a defence if he is able to prove that the offence was committed without the employer's consent or contrivance, and that the employer took all measures to prevent the commission of the offence that he or she could reasonably be expected to have taken, having regard to all the circumstances. It would seem to me that if a similar provision were included in this bill, we would be able to achieve the government's objective more effectively and tightly. I will be raising this again at clause 4, but I will be interested in the parliamentary secretary's comments about why these provisions were not included in this bill. Could the parliamentary secretary also expand on the comments he made about vicarious liability?

Hon MICHAEL MISCHIN: I will deal with it when we get to clause 4.

Clause put and passed.

Clause 2: Commencement —

Hon KEN TRAVERS: I have a very quick and a simple question for the parliamentary secretary. I note that clause 2(b) refers to a date fixed by proclamation, and that different days may be fixed for different provisions of the legislation. I was wondering why that is required when, in other legislation, the rest of the act comes into operation on the day after the day on which the act receives royal assent. I am intrigued about why we need to have it on the date fixed by proclamation, and why different days may be fixed for different provisions.

Hon MICHAEL MISCHIN: The honourable member is quite right—the bill could have provided that all the provisions of the bill came into operation on the same day. However, one reason for this is that it may very well permit the sort of education process that has exercised the minds of some members opposite who have addressed the matter of the vendors' responsibility for selling various items. Plainly, it might be opportune to increase the penalty in clause 5 immediately and to leave the proclamation of clause 4 and the creation of the offence therein to another occasion once the Office of Crime Prevention has done its bit and fulfilled its education campaign.

Hon KEN TRAVERS: There were a lot of "mights" in that response. Are they "mights" or is that the government's intention? Is the government planning to have an education campaign prior to the proclamation of clause 4, which I think is an excellent idea? It is a very good reason to proclaim it. I would have thought that it might be worthwhile to have a campaign about the provisions of clause 5 also. Certainly I agree with clause 4. I am keen to know whether the government will do that, and, if so, whether the parliamentary secretary can give us an outline of what the government envisages for that.

Hon MICHAEL MISCHIN: Yes. The process is underway as we speak.

Hon Ken Travers: What is it?

Hon MICHAEL MISCHIN: Education packs will be sent to schools and the Office of Crime Prevention is liaising with industry and advising industry about the effects of the bill.

Hon KATE DOUST: Will any regulations be drafted to deal with the education program and how training will be provided by employers so that it provides some clarity and direction for employers about what they need to train their staff on regarding the various aspects of the legislation?

Hon MICHAEL MISCHIN: I am not aware of any regulations being proposed but the Office of Crime Prevention is preparing information for schools so that they will be able to give instructions and advice to parents regarding book lists, school supplies and the like. The Retail Traders' Association of WA has been spoken to by the Attorney General's office. The Office of Crime Prevention is responsible for the implementation of the bill and for educating those who need to know about it and the effects it will have. I cannot see much scope for regulations in matters such as this.

Hon Kate Doust: It was simply a question of whether there would be. I did not say that there had to be.

Hon MICHAEL MISCHIN: As far as I am aware, the answer is no.

Hon KEN TRAVERS: That raises a couple of questions. I am still unsure about how the government intends to notify the sellers of these products that this new legislation is in place and whether a formal process will be put in place to notify the sellers of the products that that will be the case. I will sit down and let the parliamentary secretary answer that question and then I will ask a further question as a result of the comments he just made.

The CHAIRMAN: I note Hon Ken Travers' intention to get to the nub of the issue. However, I would have thought that perhaps that was more in keeping with clause 4. This particular clause, unless the member can give me some indication of why it is relevant to his line of questioning, is more about the commencement of future sections 1 and 2 of the act and the rest of the act.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon KEN TRAVERS: If the Chairman had been listening to the debate, he would have heard the parliamentary secretary outline the reason for clause 2(b), which is to have two separate dates for proclamation. He said that it is the government's intention—he originally said “might” and then we got him to confirm that the government will—to have an education campaign. We are now teasing out exactly what the government will do before it proclaims the future section 2. I would have thought that that was very relevant to this clause of the bill.

Hon MICHAEL MISCHIN: I think I said that the reason for the different proclamation dates may very well be for that purpose and that the Office of Crime Prevention is involved in educating people about the effect of the bill in anticipation of it being passed. It is not a matter of “will”; it is a matter of “is”, as far as I understand it. As to whether that is the precise and only purpose, it provides that flexibility to the government.

Hon KEN TRAVERS: That raises the question of how someone can be educated about what the bill will be before it has been passed through Parliament. Obviously once one gets the numbers in this place, one gets a bit ahead of oneself and decides that one does not have to wait for the processes of Parliament to make those decisions.

I will accept the guidance of the Chairman on my next question. I am interested in the fact that the parliamentary secretary indicated in his response that there was a need to notify schools. I still did not get an answer about how the government would notify the individual sellers of these products that it will now be an offence to sell certain products to a person who is under the age of 18 and what those sellers will need to go through. I am intrigued also about why schools need to be notified about this legislation and about the mention of school book lists and the like. I am intrigued to know why the parliamentary secretary said that.

Hon MICHAEL MISCHIN: Mr Chairman, I would have thought it was obvious, frankly.

Hon KATE DOUST: Hon Ken Travers has put a series of questions to the parliamentary secretary for which the member clearly wants an answer. Throwing up his hands in the air and saying it is obvious is not an appropriate response by the parliamentary secretary to the member's question.

Hon Sue Ellery: It is not very parliamentary.

Hon KATE DOUST: The Leader of the Opposition is right; it is not very parliamentary. I ask you, Mr Chairman, to ask the parliamentary secretary to provide a more appropriate response with some detail.

Hon MICHAEL MISCHIN: I heard whisperings across the corridor about schools having to prepare supply lists and the like and that the schools have to be told about this legislation. Sometimes schools either supply these things or may supply these things —

Hon Kate Doust: They do supply these things.

Hon MICHAEL MISCHIN: They do. It is obvious, is it not? I was right. Hon Kate Doust knows the answer but Hon Ken Travers is troubled by it and cannot work it out. Hon Kate Doust knows the answer, yet the member wants me to tell Hon Ken Travers the obvious.

Hon KATE DOUST: It may be obvious to the parliamentary secretary and me. I do not know about the parliamentary secretary's domestic arrangements, but I have children and use book lists all the time. Unfortunately, my honourable colleague does not have children and nor does he understand what items are listed on the book lists. The whisperings that the parliamentary secretary might have heard from this side of the chamber count for nought in terms of the permanent record. When the parliamentary secretary is asked a question by a member in committee, he is required to put a response on the formal record. That is what we are asking the parliamentary secretary to do. Whatever chatter he has heard does not matter. We need a formal response from the parliamentary secretary for the permanent record.

Hon KEN TRAVERS: This was one of the issues that the parliamentary secretary made a comment about during the second reading reply. He said that we were sitting on the fence. The opposition supports this legislation but the job of the opposition is to ask questions and to have things put on the public record for not only members of this place, but also people in the broader community. Hon Kate Doust may know the answer to this question but I am still not sure whether I understand the answer to it. However, the people who read *Hansard* and who want to follow the debate in future years —

Hon Simon O'Brien: They flock into your office every day, don't they! They say to the member, “I was just reading *Hansard*. What is the commencement date of this bill?” It must be an interesting office you've got!

Hon KEN TRAVERS: Hon Simon O'Brien would know as well as I that it is amazing just how often people do refer to *Hansard* and say that they have read something in *Hansard*. The one thing that blew me away about becoming a member of Parliament was just how many people follow debates in this place and recall them and raise these types of matters. I must tell Hon Simon O'Brien that I reckon a whole range of people across Western

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Australia will be really interested to know what impact this bill will have on their school book list and on the schools. I guess we can leave it until we get to clause 4, but now that it has been raised, I reckon there are some really interesting questions. If a child needs a marker with a tip of more than six millimetres wide, does the school sell it to the parent who then gives it to the child to take back to the school for the purposes of meeting the requirements of their book list? We can get to that when we get to clause 4.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Chapter XXIV inserted —

Hon KEN TRAVERS: I ask the parliamentary secretary to explain what are the implications of proposed section 216 for school book lists and the operations of schools?

Hon MICHAEL MISCHIN: Axiomatically, if clause 4 is passed and a new offence is introduced, it would be an offence for a school to sell directly to a juvenile a can of spray paint, a marker pen or a similar instrument that has a tip more than six millimetres wide and contains a fluid that is not soluble in water, and hence it would have to advise parents that they would have to purchase that article for their children.

Hon KEN TRAVERS: Can I get this exactly right? What the parliamentary secretary is saying is that this will now mean that if children are under 18 and need articles for their art classes at school, they will get a book list. Instead of the kids just picking it up and the parents paying for the book list, there will now need to be a process whereby the parents buy the implement and then give it to the children to take to school. Is that what we are talking about here?

Hon MICHAEL MISCHIN: Schools can deal with it in a variety of ways. The only thing they cannot do is sell the article directly to a child.

Hon Ken Travers: Can they provide it to a child if a parent has paid for it?

Hon MICHAEL MISCHIN: If it has been sold to a parent, yes, I would have thought so.

Hon KATE DOUST: Obviously, things have changed since the parliamentary secretary and I went to school. We probably used to be provided with most of those articles. I know as a parent that for a number of years I have predominantly purchased books and all the art supplies for my children online. I hate queuing up for these things, so, like a lot of parents, I place an online order and pick it up or my child picks it up and I pay for it with a credit card. A couple of key providers are used for providing a book list. I will deal with those first. An online purchase can be done by a parent, or a parent can ask a child to do it. A lot of very competent children under the age of 18 can order their own book list online and pay for it with their parent's credit card. The alternative is to give a child the money and say that the child must get X, Y and Z products, some of which will be art products. Children may go to Officeworks, a newsagency, Jacksons or any other sort of art provider. Probably, the only way around this for schools would be for schools to make the purchases and keep the supplies on site all the time so that they would not be taken out of a classroom, and to add the cost to a utilities fee or a school fee in some way, depending on whether the school was public or private. I think it will be quite difficult. Because people want to do it expeditiously, they go through a book list, tick off everything, pay for it and pick it up in a lovely plastic bag or box, and that is the end of it. For children doing art in primary or secondary school or art as a specialist program, for which they have a much bigger array and diversity of product, it will be quite complicated to manage. It is not as simple as it was when most members were at school. Will it mean that the parents can organise some supplies and children can access others? We need to be a lot clearer. It is part of the point that we have been trying to raise about the elements of this bill, particularly the educational aspect. I am quite looking forward to Hon Giz Watson having the opportunity to move her amendment. I think this is a bit more complicated than the parliamentary secretary is proposing because it is not simply about the school telling the parents to buy articles.

Hon KEN TRAVERS: If the parliamentary secretary is right, Hon Kate Doust can go online, sign up for these goods and pay with her credit card, so the school will have sold them to her but then the school physically hands a pen to her son —

Hon Kate Doust: It is not even the school; you do it through another supplier.

Hon KEN TRAVERS: It might be the school or the supplier, but through the purchase of the school book list, the pen is then handed over to someone under 18, and that would not be a breach of this legislation.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon MICHAEL MISCHIN: That is right. Supplying is not an offence; only the sale to a child is an offence. They can include it as part of a package of other things that are being ordered by a responsible adult. One can reasonably expect that a responsible adult will know what is being ordered and have the child account for it.

Hon KEN TRAVERS: I just want to understand, because one of the things that I did after Hon Liz Behjat gave us our lesson in graffiti 101 the other day was a little more research to try to keep up to speed with my colleague in the North Metropolitan Region. One of the things I learnt from the research that I did was that a lot of the graffiti is done by gangs, in which there is a combination of people over 18 and under 18.

Hon Kate Doust: They are trainees.

Hon KEN TRAVERS: They are trainees or whatever one wants to call them—apprentices. However, there are over-18 year olds and under-18 year olds in those gangs. One of the gang members who is over 18 could purchase all the products, walk out of a shop and distribute them to everybody who is under 18. Bob's your uncle; it is not a problem because the legislation has been complied with. Is that really what the parliamentary secretary is telling us tonight?

Hon MICHAEL MISCHIN: Yes, that is right.

Hon KEN TRAVERS: In light of that, will the parliamentary secretary explain to us how he expects proposed section 216 to limit access to these implements by people under the age of 18?

Hon MICHAEL MISCHIN: It applies to those who do not have access to someone over the age of 18 years who is prepared to supply them with the identified graffiti implements. As I said on numerous occasions, we do not pretend that this will prevent people from selling implements across the counter to juveniles. By making it more difficult, hopefully, it will make it less easy for juveniles to misuse these implements.

Hon KEN TRAVERS: That is interesting, because I have in front of me a copy of the letter that the parliamentary secretary provided to Kate Greenaway, which he tabled in the chamber. The parliamentary secretary said —

There is nothing unusual about the strategy of targeting the vendor to limit supply to categories of purchaser: the sale of tobacco products to juveniles, for example, is prohibited by law, as is the sale of alcohol. The proposed law simply seeks to make it more difficult for juveniles to have ready access to the most commonly used graffiti implements, and hopefully to reduce access.

The parliamentary secretary invokes the language of tobacco and the language of alcohol, but it is my understanding that with those items, it is not only an offence to sell them to juveniles. If, as an adult, I were to buy alcohol and provide it to a person under 18 years of age, it would be an offence. There is no provision in this bill in that regard. A truck could be driven through this legislation in relation to the sort of people we are talking about. I do not know why we are wasting so much time of this chamber on this legislation when that will be its net effect. The kids who do graffiti will laugh at this Parliament if that is what this provision will do.

Hon GIZ WATSON: I move —

Page 3, after line 5 — To insert —

- (4) It is a defence to a charge of an offence under subsection (2) to prove the accused, or a person acting on behalf of the accused, believed on reasonable grounds that the implement was purchased by a minor for a designated work requirement, or for a recognised and structured educational activity.

This amendment seeks to add words to clause 4 that, in my view, would make the bill compliant with the stated election commitment made by the government. I ask the parliamentary secretary whether he might indicate to the chamber what exactly was the commitment in that stated policy that the Liberal Party took to the election in terms of fines for sales of spray paint to minors and, in particular, for any qualification on that proposal.

Hon MICHAEL MISCHIN: I missed something in what the member said. I ask the member to repeat the question, please, so I know exactly what it is she is looking for.

Hon GIZ WATSON: I was asking for the provision within the Liberal Party's commitment that was taken to the election in the document titled "Tough On Graffiti". If the parliamentary secretary does not have a copy of it, I will read it out and seek to table it, if that helps the debate.

Hon MICHAEL MISCHIN: I can see the passage to which the honourable member is referring. It is the Liberal Party's policy statement and it states under the heading "Fines for sale of spray paint to minors" —

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

The Liberal Party believes those selling spray paint have an obligation to the community to ensure that paint is only sold to adults. We believe that proof-of-age at the point of sale for spray paint will be vital to curbing the incidence of graffiti.

Fines ranging from \$5,000 for a first offence to \$10,000 for a third offence will be issued to retailers found guilty of selling spray paint to people below 18 years of age, —

Of course, the provision also includes marker pens of a certain dimension. The policy continues —

unless the purchase is made for a designated work requirement, or for a recognised and structured education activity.

That certainly was the intention at the time for the legislation, yes.

Hon GIZ WATSON: Perhaps it would assist the chamber if I table that document. I might table it after I have completed my comments, so that I can still refer to it.

The reason that I have moved this amendment is that it seems to me that if that was the intention, it is only reasonable to put that in the bill. Therefore, this amendment will simply provide a defence to a charge that if a person believed on reasonable grounds that the implement was purchased by a minor for a designated work requirement, or for a recognised and structured educational activity, that would be a defence to a charge.

As members know, the Greens do not think much of this bill at all, but at the very least we believe the bill should reflect the intention when that commitment was made. I understand that the opposition will support this bill, despite its reservations, on the grounds that it was an election commitment. Therefore, it seems to me that we should honour exactly what that commitment was.

This amendment is entirely reasonable and it will make it very clear that we are not seeking to interfere with the problem that someone is genuinely trying to purchase a product for a recognised and structured educational activity. I guess that could be educational or artistic, or both. I seek the support of the chamber for this amendment. Hopefully it more accurately reflects the election commitment that the government gave.

Hon KEN TRAVERS: Normally the processes in this chamber are that when a member moves an amendment, members are given the courtesy to respond. I know courtesies were thrown out the door by the Leader of the House earlier this evening. I thought the parliamentary secretary would not stoop that low. I thought we would have got a response.

I thought Hon Giz Watson's amendment, apart from anything else, removes the cumbersome red tape that this government will be imposing upon schools for, as it was determined earlier, no real purpose or benefit because the kids who would want to get hold of these implements would be able to get them as easy as pie. I am very disappointed that this bill will not achieve what I hoped it would achieve; that is, to limit supply. I wanted members to consider how we might go further and limit the supply of some of the other items that people use for graffiti. All we are doing now with this bill is placing cumbersome red tape on schools in the way that they provide legitimate tools to children. This amendment, apart from anything else, would assist in removing some of that red tape.

Hon KATE DOUST: I, too, thought that the parliamentary secretary was going to respond, so I delayed saying anything. We will support Hon Giz Watson's amendment. I think it goes beyond the issue of schools, which is very important in the provision of a product to a minor. This matter has been referred to in some of the earlier discussion about the retail sector. I know that I talked about this issue in my contribution to the second reading debate. I have worked in the retail sector and I know that things have vastly improved in most areas, but I have a real concern that if a minor pays for a product at the register, the person working on the register, whether casual or part time—I think Hon Adele Farina talked about this—may not know, either through lack of training or because that person may be new or may not have seen the advertising, that he or she should not sell these sorts of products to minors. I would hate for that type of penalty to be imposed on those people because that was just their job. I think it is important to have this type of option available.

I hate to say that I want to support Liberal Party policy, but on this occasion it makes sense. If the Liberal Party said to the community at the election that this is what it wanted to do, and this amendment would fit in with that view, I think a defence provision is needed in the legislation. I would be very concerned about how this would play out in the retail sector. I specifically raised the question of how the sector would deal with this issue. I do not think the parliamentary secretary outlined in his reply who would monitor it, who would liaise directly with retailers, who would ensure that training was provided and that some sort of information was made available to consumers about what they could or could not have, and who would ensure that these products were taken off the shelf. I have some real concerns about how this will play out in practical terms for those people working in the retail sector, given the nature of employment in that sector. A lot of young people work in places that sell

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

school products. I know that their book list sales are predominantly manned by junior workers. When people buy school products, usually during January at the peak time of year, again it is generally younger workers who man the registers during that busy sales time. A lot of the onus is put on those people. Although they may quite genuinely believe that they are selling the product to somebody of the required age, it might be hard for them to know who is or who is not of that age. Including this amendment in the legislation is very important, and we hope that the government will see its way to having this provision included.

Hon MICHAEL MISCHIN: I apologise; there was no disrespect meant to Hon Giz Watson. I simply missed my cue, I guess. I had fully intended to respond. I had already foreshadowed the objection —

Hon Ken Travers: I didn't think it was your style.

Hon MICHAEL MISCHIN: I thank the member. That is very kind. I am moved. I think I am going to cry!

Hon Ken Travers: That's why I made the comment!

Hon MICHAEL MISCHIN: The government does not support the amendment. I take the point that Hon Giz Watson made about the election policy statement. Of course, what has to be borne in mind is that we do not resile from the intention and the sentiment of the policy statement, but it is a fact that trying to reduce into the form of a statute what may have been intended and genuinely thought to be a practical qualification, on examination turned out to be a little more complicated than that. On analysis, it was not practical. The words that are used in the policy statement are not meant to be interpreted in the same way as a statute.

Hon Kate Doust: So they don't actually mean anything.

Hon MICHAEL MISCHIN: No. It is a conveyance of a concept and an idea.

Several members interjected.

Hon MICHAEL MISCHIN: It is not framed in legal terms or in the form of a statute.

There are a couple of issues with the proposed amendment. Firstly—it is matter of form, I suppose—the use of the word “minor” is inconsistent with current terminology. The other defence in proposed section 216(3) refers to a person under the age of 18, and the substantive provision deals with the concept of a child. That is my initial point.

The problem with the proposal is the vagueness of the concept of a “designated work requirement” or a “recognised and structured educational activity”. Those are very broad terms and are not conducive to simple application. The second problem is that the exception that is provided in the amendment will in effect undermine the purpose of the bill. If a juvenile purchases one of these graffiti implements, there is a better than even chance that when asked, “What do you want a can of spray paint for? You're only 15 years old”, the answer will be either “I need it for school” or “I need it because my employer told me to buy it.” All that would be required to permit someone to profit from that would be for that person to say, “I believed him. I may not have honestly believed him and had my suspicions, but I believed him.” There is not even the element of an honest and reasonable mistaken belief, as there is in section 24 of the code. It would be impossible for the prosecution to disprove or to qualify an assertion of belief based on advice from a juvenile to the vendor that he needed it for one of these purposes. Even simply saying that his boss told him to buy a tin of spray paint because he is painting a door would be a “designated work requirement” within the vague terms of the proposed defence. That would simply undermine the purpose of the legislation because it would not be a measure that would prevent the selling of the article to a juvenile. It would be an encouragement to lie, and no person would be able to judge whether that was the truth. The government opposes the amendment because it is simply not workable in its current form.

Hon GIZ WATSON: I thank the parliamentary secretary for his further response. I give the parliamentary secretary the example of an apprentice to a graphic artist or a panel beater who is employed and independent and is genuinely going to purchase something for his education or work. That person will have to say, “Can you find someone else here who is over 18 to buy this because I can't do that?” It is not that the government opposes the intention of trying to prevent the law operating on those kinds of people, so there may be a form of words that the parliamentary secretary could modify to provide for that exception. I am looking to see whether there is any middle ground, since we both agree that we do not want to impact on those people. There is a big difference with someone who is 16 or 17 years of age who might be in training or working who has a legitimate need to use a spray can or more likely a felt pen and will have to go back and find somebody who is older to make the purchase.

Hon Ken Travers: The legitimate kid will not be able to purchase it, but there is no penalty in the transaction of the kid who wants to do graffiti but gets his mate to buy it for him.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon GIZ WATSON: Is there any way of amending the form of words, as my sense is that it is not the intention of the government to capture those people in the legislation? Whatever else I think about the approach of this bill, we all agree that these are not the people who we want to be affected. I appeal to the parliamentary secretary to find a way of amending this amendment. I appreciate the comments regarding the uniformity of words, and I would accommodate a change to “a person who has not reached 18 years of age” rather than “a minor”. Maybe there is some movement or reasonable grounds that we could entertain.

Hon MICHAEL MISCHIN: It is my understanding that the ingenuity of the drafters fell short of finding a way of implementing that sort of exception. It has been suggested that a juvenile who needs these implements for a legitimate purpose cannot go out on the instructions of their teacher or their boss and purchase either a can of spray paint or a marker pen with a wide tip that contains non-water-soluble ink. If an employer sent one of his junior staff out to do that, he is likely to be disappointed—if the vendor is doing his or her job under the legislation. That is unfortunate. As for graphic artists and the like, I do not know how many under 18-year-old graphic artists, or designers, as Ms Greenaway put it, there are, and I do not know how many people will be adversely affected by this. But there are ways around this for legitimate purposes, and there is no offence for supplying. Therefore, a teacher can supply his or her students with these sorts of articles in the context of an art class. Parents can purchase on behalf of their child and supply to their child and know that their child has these things and in the event the child says he needs another can of spray paint as the one he was given yesterday is gone; the parent can ask how it was used and the like—if they are responsible parents. It will make life more difficult for bosses who want their under-18-year-old staff to do things like that, and people will be inconvenienced. That is the sad thing about antisocial behaviour and delinquency, whether adult or juvenile, that the many sometimes have to suffer for the few. That point was made by one of the speakers earlier today—I think it was Hon Robin Chapple—when he was talking about the way juveniles took ownership of a wall that they were illustrating in Port Hedland and tended to be very protective of their artwork and handiwork and decried the attempts of delinquents to vandalise it. That happens and it has to be encouraged, but unfortunately we live in the real world and the many often do have to suffer inconvenience for the sake of misconduct of the few.

Hon Ken Travers: It will not stop the misconduct of the few. That is the problem.

Hon MICHAEL MISCHIN: It may or may not. It may stop some, but it is better than sitting back and doing nothing and saying it is not worth trying.

Hon Ken Travers: That is the case if you have proper legislation—not this one.

Hon MICHAEL MISCHIN: When the member brings in proper legislation, after doing nothing for seven and a half years, we will entertain it.

Hon KATE DOUST: I have a question in relation to subclause (2). I would like the parliamentary secretary to think of this as an example. I refer to the case of a 15-year-old who goes into Big W and purchases a marker pen with a tip that is over six millimetres wide, and goes through a register with a 16 or 17-year-old shop assistant serving. The shop assistant does not ask questions. The person serving is in a hurry and has been told not to ask questions! The shop assistant scans the products, and they are paid for and the 15-year-old is off. If that product is used for graffiti, will the shop assistant who sold the product to the minor be liable or will the manager of the shop be liable, or will head office or the owner be liable?

Hon MICHAEL MISCHIN: That will depend very much on the circumstances. There is a provision for charging corporations with offences, and it has not been unknown in the past. The obligation is not to sell. The offence focuses on a person, but that does not necessarily have to be a natural person; it may be there can be liability on the part of the shop. However, if the legislation is heeded, it will not be possible for 15-year-olds to pick these sort of articles off the shelf because the shop would have to take measures to ensure that marker pens that fall within this category are not available for sale in that fashion.

Hon ADELE FARINA: Where does the bill require a retail shop owner to not display items that come within the definition of a graffiti implement?

Hon Michael Mischin: It does not.

Hon ADELE FARINA: In response to a question asked by Hon Kate Doust, the parliamentary said it would not be possible for a 14 or 15-year-old to go into a department store and pick off the shelf a graffiti implement and go through the checkout and purchase it because the shop would have an obligation not to have that implement on display. Would the parliamentary secretary clarify his comments because his response to Hon Kate Doust indicates that there is an obligation to not display? On my reading, there is nothing in this bill that places such a requirement on a retail shop owner. I ask the parliamentary secretary to point out to me where in this bill that

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

requirement exists, or, alternatively, to modify his response to Hon Kate Doust, because there a clear inconsistency in what the parliamentary secretary has said. The parliamentary secretary cannot say to Hon Kate Doust that there would not be a situation in which a 14-year-old could go into a department store and pick a graffiti implement off the shelf and go through the checkout because the retail shop owner has an obligation to not have that implement on display and easily accessible to shoppers who cannot legally buy such an implement, when that requirement does not exist within the bill. I ask for some clarification from the parliamentary secretary on that matter.

Hon MICHAEL MISCHIN: There is no requirement in the bill. The member has already asked for that. However, if retailers want to avoid breaking the law, they will need to formulate their own strategies for how to prevent that from happening.

Hon ADELE FARINA: It is clear from that answer that the parliamentary secretary's response to the question asked by Hon Kate Doust was incorrect.

Hon Michael Mischin: No, it is not.

Hon ADELE FARINA: There is no obligation on a retail shop owner to withhold these items from display. The only obligation on a retail shop owner is to prevent the sale of these items to a person under the age of 18 years. A retail shop owner is not required to lock away these items and not have them on display or easily accessible. They are two completely separate matters. It is important that the parliamentary secretary not mislead the Parliament on that matter, because there are legal consequences that flow from that interpretation.

Hon MICHAEL MISCHIN: If I might answer that, I was answering a different question in a different context, and I was giving an illustration. So, for Hon Adele Farina to say that I was misleading the Parliament is simply uncalled for.

Hon ADELE FARINA: In relation to proposed section 216, which creates the offence of selling graffiti implements to children, will the parliamentary secretary please inform the Parliament what action the government will be taking to inform every shop assistant, be they full time, part time or casual, that this law will be coming into effect? The onus will be on the shop assistant—the person who conducts the transaction—not to sell these implements. There is nothing in this bill that will require the employer to inform the employees of that obligation. In the case of 16-year-old part-time or casual shop assistants, we can be sure that they are unlikely to be aware of this law. So, the obligation really falls on the government to conduct an education and information program about how it is going to inform the sellers—that is, every shop assistant, be they full time, part time or casual—that it will be an offence to sell graffiti implements to persons under the age of 18.

Hon MICHAEL MISCHIN: I have already answered that. The Office of Crime Prevention is working on the implementation of this legislation. It is already working with peak industry bodies, including newsagents, the Chamber of Commerce and Industry, the Retail Traders' Association, and the like, and informing them. People will find out that that is against the law in the same way that people find out that any particular matter is against the law when Parliament passes legislation concerning that matter. We advertise and we inform people. There has been considerable publicity about the government's intentions with this legislation so far. That is evidenced by the fact that art supply shops, such as The Butcher's Shop and the Graphite Crew, have written to us about this legislation. We have had protests concerning this legislation. It is not secret.

Hon Kate Doust: It was a rally, not a protest.

Hon MICHAEL MISCHIN: A rally—I suppose there is a distinction. The fact remains that people are aware of this legislation. They will be made more aware of it. As I have said, steps are being taken by the Office of Crime Prevention to ensure that information is provided to the industry and to the community.

The DEPUTY CHAIRMAN (Hon Matt Benson-Lidholm): Order, members! For the purpose of continuity, we really need to get back to Hon Giz Watson's motion to insert the words. I very much suggest to members that that is what we need to do. We can possibly come back afterwards to the questions raised by Hon Adele Farina. The question is that the words to be inserted be inserted.

Amendment put and a division taken, the Deputy Chairman (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Extract from Hansard
[COUNCIL - Tuesday, 13 October 2009]
p7773b-7795a

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple

Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina

Hon Lynn MacLaren
Hon Ljiljanna Ravlich
Hon Sally Talbot

Hon Ken Travers
Hon Giz Watson
Hon Ed Dermer (*Teller*)

Noes (18)

Hon Liz Behjat
Hon Jim Chown
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Simon O'Brien
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Jon Ford
Hon Jock Ferguson

Hon Peter Collier
Hon Helen Morton

Amendment thus negated.

Hon ADELE FARINA: I return to the issue of how shop assistants are supposed to know about this law. I know that the parliamentary secretary believes that debating it in this place, issuing a few media statements and placing an advertisement or two in the paper will suffice, and everyone will automatically know about it. It may surprise the parliamentary secretary that a lot of people are not really interested in the debate that happens in this place—particularly 16-year-olds. They also do not read newspapers. We cannot necessarily assume that just because we know about it, everybody else will know about it. It concerns me that this provision places a significant burden on a 16-year-old who may be a part-time or casual employee to know the law. There is no obligation on an employer to ensure that the employee is appropriately informed. It would seem to me that if the government was taking a responsible approach to this legislation, it would have included provisions as part of clause 4 similar to those that exist in the Tobacco Products Control Act 2006 and in the liquor licensing laws to require the employer to display a sign warning customers and employees that it is illegal to sell graffiti implements to a person who has not reached 18 years of age. It seems to me that this requirement would not be a huge burden. It will at least ensure that there is some likelihood that employees and customers will understand the law. I would have thought it would be the sort of thing the government would want to do to ensure that people are aware of the law. I would be interested in understanding from the parliamentary secretary why the government has not included a similar provision as part of clause 4 so that we could ensure that full information is being passed on and that people are aware of the law once it is enacted.

Hon MICHAEL MISCHIN: I was not aware that there was a question behind that. I thought it was an expression of concern.

Hon ADELE FARINA: I asked the question when we debated the short title of the bill, and the parliamentary secretary told me that he would answer it when we dealt with clause 4. I will run through the whole argument again. I am happy to do it three or four times, but, Mr Chairman, please do not pick me up for being repetitive if the parliamentary secretary does not understand when a question is being put to him. The issue I raise here is that a huge burden is being placed on the person who sells a graffiti implement under clause 4 of this bill. That person could be a 16-year-old part-time or casual shop assistant who has received absolutely no training and is unaware of the law. I would have thought that it would be a responsible approach by this government to include as part of clause 4 a provision similar to that in the Tobacco Products Control Act 2006 requiring the shop owner to display some sort of sign warning customers and employees that it is illegal to sell graffiti implements to persons who have not reached the age of 18 years. In my view, this is not an onerous requirement. It would certainly ensure that both employees and customers are aware of their legal obligations. I would have thought that a responsible government would want to ensure that that message gets out there and that some responsibility in relation to the implementation of this law is placed on shop owners, and not simply on the 16-year-old shop assistant who may be dealing with the sale. I would like to know from the parliamentary secretary why the government has elected not to include a similar provision in this bill, and whether the government will consider an amendment to include a provision similar to this in the bill. It would improve the bill and help ensure that its objectives are realised. I would like the parliamentary secretary's comments on that aspect.

Hon MICHAEL MISCHIN: The Office of Crime Prevention is putting out a fact sheet as part of its campaign, which is not simply press releases as has been claimed. That fact sheet will contain recommendations that signs be posted and advice given to staff. There is no amendment that I need to consider.

Hon Kate Doust; Chairman; Hon Sue Ellery; Hon Michael Mischin; Hon Giz Watson; Hon Ken Travers; Hon Dr Sally Talbot; Hon Simon O'Brien; Deputy Chairman; Hon Adele Farina

Hon ADELE FARINA: The problem with the government's approach to this is that there can be no certainty that the 16-year-old part-time or casual employee has actually been properly inducted and trained, and is aware of the law. However, a huge burden is being placed on that 16-year-old to know and abide by the law, and there are serious consequences if he or she does not. The government is not prepared to put up a warning, which would have been a simple and not very onerous requirement. Such a warning would fall in line with the requirements of the tobacco and liquor legislation. The issue then becomes why the government will not consider a provision similar to section 110 of the Tobacco Products Control Act 2006, which places some liability on the employer to ensure that the employee is adequately trained and knows the law. It is not good enough to simply say that the Office of Crime Prevention will do some training, or get a letter out to shop owners. That does not necessarily mean it will reach the shop assistants. A shop assistant who is working part time may not be in a shop on the day when the Office of Crime Prevention people pass by. This is simply not an adequate way to address this issue. We cannot place this kind of burden on a 16-year-old in this bill without complementing it with some safeguards. The government has not even gone to the extent of providing a defence for a 16-year-old to say that he was not trained and the employer never told him that it was illegal to sell a marker pen to a person under the age of 18; he did not know that he would be breaking the law. If the government is not going to provide a warning or a provision for a defence, it clearly needs to place some obligation in this bill on the employer to ensure that the employee is appropriately aware of the legal obligations. The government cannot introduce laws of this nature without understanding the potential ramifications of what it is doing and trying to mitigate and safeguard those who were not the intended targets of the bill. It is irresponsible for the government to sit there and say that fundamentally it does not care; it did not think about it when the bill was drafted, and now it is too late and everyone wants to go home. The government does not want to deal with ways to improve this bill; it is just interested in going home. The parliamentary secretary will just keep ignoring my questions or will not answer them and will not really try to deal with finding a solution to the problem, and eventually I might sit down and everyone can go home. It is irresponsible of the government to take this approach. I hope that the parliamentary secretary will ask for progress to be reported on this matter so that he can go and talk to the minister responsible and come back to the committee with some amendments that try to deal with a very serious failing in the drafting of this bill. I asked the parliamentary secretary to seek reporting progress of the committee consideration so that he can speak to the Attorney General and get some instructions about improving this bill to deal with its shortcomings and to ensure that this government produces reasonable and responsible legislation.

Hon MICHAEL MISCHIN: I note the honourable member's views on it. As for the invitation, I decline.

Clause put and passed.

Clause 5 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.