

MOTOR VEHICLES — OFFENSIVE SIGNAGE

Grievance

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [9.10 am]: My grievance is to the Minister for Police. I thank her for taking this grievance. It might sound a little unusual, but I raise it because one of my constituents came to see me about it. I, too, have noticed the problem, and I am sure a lot of other people in the community have noticed it as well. The problem is the standard of language and visual signage on cars and vehicles on the road. Although the constituent who came to see me is not a prude, he is very concerned about this issue because he often travels in the car with his grandson. He said that he can decide what his grandson sees at the movies, what books he reads and what DVDs he watches; however, when they are travelling on the road, he does not have any choice in what his grandson sees. He came to me and asked whether there are regulations for signage, bumper stickers and colour diagrams and whether there are standards that the community should follow. He asked me to look into it for him. I have noticed those things, too.

To be honest, Mr Speaker, I do not use that sort of language, and I will not use that language in the chamber this morning, so you do not need to worry; I will leave that to members' colourful imaginations. Most normal people are concerned about this issue. During my investigations, I determined that the Classifications (Publications, Films and Computer Games) Enforcement Act 1996 covers bumper stickers and signage on cars. This is not a clear matter on which to legislate, because the section states that the language must be against contemporary community standards. We all know that such standards are not uniform throughout our society. Section 59 imposes the indecent or obscene test on language. It is up to the police to decide whether the language used is obscene or indecent. I suspect that police hear more indecent and obscene language than any other section of our community, which makes it hard for them. I am sure that they would prefer to decide on such matter with clearer guidelines. The courts refer to a "reasonable person" when considering the level of offensiveness, which is a little unclear. I understand—I would be pleased to be corrected on this—that there is no checking of bumper sticker suppliers or sellers or of car signage to determine whether they meet community standards. I suspect people can put almost anything on a vehicle. It is very difficult area to deal with. During my research on standards, I read about a court case in Dubbo, New South Wales, in which an 18-year-old man was arrested for offensive language when he swore at a police officer. I do not wish to cast aspersions on the people of Dubbo, but I emphasise that the language in the New South Wales act is different from the language in the Western Australian act. The New South Wales act refers to "disorderly or offensive conduct or language" whereas the Western Australian act refers to "indecent" or "obscene" language. It is hard for our courts to consider a court outcome from Dubbo, New South Wales. We need to be careful about that.

This issue is probably more about community standards. Many people in our community have higher community standards than that of the lowest common denominator. For that reason, if for no other reason, it is important that we assist those people and maintain a standard in our community that is acceptable to most people, not the lowest common denominator. Once again, I understand that it this is not an easy subject to deal with. But in situations in which people do not have a choice what they see or read, the standards should be higher. In situations in which people can make a choice, sure, let them make that choice. It is difficult for people to make a choice when something is right in front of them. They would have to get off the road for a while, which they should not have to do.

We should look after our community. Everyone talks about what is happening in our community and what is not right. Simple things like this will make a difference because very few people would say that they have not seen something that has made them say, "Oh, my gosh—how can they get away with that?" Is that what we really want in our community? On behalf of many people in my community, and, I am sure, many people in other communities, I request that bumper stickers and signage on vehicles be more tightly regulated. Perhaps we can we assist the police in doing this. It would also be good if the police were authorised to fine the owners of vehicles who do not comply with signage that meets community standards because it is indecent or obscene.

MRS L.M. HARVEY (Scarborough — Minister for Police) [9.16 am]: I thank the member for Kingsley for this grievance, and for the numerous representations she has made to me as the Minister for Police about law and order matters on behalf of her constituents. The member for Kingsley was correct when she referred to the exposure of police officers to offensive language and to the actions of the cohort of the community that, as the police would agree, is at the extreme end of the scale. Police officers do a terrific job policing those people in very difficult circumstances.

The member for Kingsley referred to a bumper sticker that contains an offensive slogan or image. I advise that there is a provision in the Criminal Code Compilation Act 1913 and the Classifications (Publications, Films and Computer Games) Enforcement Act 1996 under which a person displaying a particular item may be deemed to have committed an offence. Section 74A of the Criminal Code makes it an offence to use insulting, offensive or

threatening language or to behave in an insulting, offensive or threatening manner in a public place. Section 59 of the Classification (Publications, Films and Computer Games) Act 1995 makes it an offence for a person to display, publish, exhibit, possess or demonstrate an indecent or obscene article in public. Section 59 of the Classification (Publications, Films and Computer Games) Enforcement Act 1996 makes it an offence for a person to possess, display or sell an indecent or obscene article. It is a matter for the court to determine whether an article is indecent or obscene. Under section 3 of the act, an article includes a publication and has the same meaning as that under section 5 of the Classification (Publications, Films and Computer Games) Act 1995, which is a commonwealth instrument. Pursuant to section 5 of the commonwealth act, a publication means any written or pictorial matter. This includes bumper stickers, caps and clothing, such as T-shirts. According to the Department of the Attorney General's records, from 2007 to 2013, 140 charges were lodged in either the Magistrates or Children's Court for section 59 offences. Of these, 138 related to section 59(5) of the act, which makes it an offence to possess or copy an indecent or obscene article.

While there is the potential that the display of offensive bumper stickers could fall within the range of both these provisions, the case law for offensive language and behaviour suggests that in order for a person's conduct or language in question to be legally unacceptable, it must be of a reasonably high level of seriousness and must attract the disapproval of a fair-minded and reasonable person. As a consequence, this means that a person commits an offence under the respective section only when his or her language or behaviour affronts contemporary community standards. Therein lies our problem.

Let us consider the bumper sticker that reads "F*** off—we are full". I think we are all familiar with it. Sections 77, 78, 79 and 80 of the Criminal Code cover the offences of engaging in conduct or possessing material intended or likely to incite racial animosity or racist harassment. It is the responsibility of WA Police to seek sufficient information to establish if it was the intent of the person displaying the bumper sticker to incite racial vilification. The way police would investigate this is more along the lines of whether it would incite racial animosity or harassment rather than the offensive language used in the sticker. The member can see that there is an issue with interpretation that has occurred over time in the courts.

Police also take into consideration where signs are displayed. For example, police may find something displayed near a childcare centre or a primary school obscene by comparison with a similar sign that might be displayed in an entertainment district or another such location. A very subjective and comparative analysis often occurs in these cases, and when they are brought to court they then have that test of the disapproval of a fair-minded or reasonable person. It is a very difficult area for police to successfully prosecute cases. WA Police does consider that short of prohibiting the display of all bumper stickers on motor vehicles, it would be impractical for any new laws to be introduced that would define with certainty the words that do or do not breach contemporary community standards.

The member referred to a case in New South Wales where the courts determined that language, which most fair-minded and reasonable people that I know and certainly my children and young people that I am within reach of would find offensive and unacceptable, sadly, forms part of the vernacular for a large proportion of our society these days. It makes it very difficult to draft legislation, regulations or any sort of law that will actually impinge upon what a proportion of our community deems a contemporary community standard. There is a difficulty. Police consider this a very vexed area of law and that it would be quite difficult for them to not only come up with a legislative instrument that would satisfy our standards and the standards of others in the community, but also overcome the difficulty for police in enforcing compliance with such legislation. Ultimately, it is up to WA Police to determine an appropriate course of action when these matters are brought to their attention and they do, as I said earlier, prosecute in certain circumstances, such as when they can prove intent to cause harm or incite racial vilification et cetera. I thank the member for bringing this issue to my attention and we will no doubt have further conversation about this in the future.