

**CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009**

*Second Reading*

Resumed from 23 September.

**HON JON FORD (Mining and Pastoral)** [2.19 pm]: The Criminal Code Amendment (Graffiti) Bill 2009 is intended to do four things: it defines a graffiti implement, and we have heard some interesting debate about what that definition is; it creates a new criminal offence and penalty for a person to sell a graffiti implement to a child; it creates a defence that can be relied upon where the accused believed on reasonable grounds that the purchaser of the graffiti implement was not a child; and it doubles the existing penalty in section 445 of the Criminal Code to a maximum of two years' imprisonment and a fine of \$24 000. As has been said before, the opposition supports this bill. I personally support it because it reflects the attitude of Western Australian society to the destructive practice of graffiti. However, I support the bill with some reservations because I am not sure how effective it will be in its own right. We need to review the bill and see how it goes over time. I am not sure whether it will work.

I wish to say a couple of things about graffiti. Graffiti is not a new phenomenon. Arguably, it has been around since modern man existed. We have different names for the artworks or vandalism on buildings and naturally occurring structures such as trees, cliffs and rock faces. It could be argued that in the early days of the Egyptian empire, hieroglyphics was a form of graffiti. In the very early days of that society, the Egyptians developed a written language out of the symbols and pictures that they put together. During a recent trip to China I had the great privilege in Macau to see on a piece of rock that had been struck with a stone the first example of the Chinese written language. It was interesting to see how close the symbol on this piece of stone resembled the Chinese written language.

Then we have the petroglyphs in the Burrup. We have had some debate about them. Rocks all over the north west are covered with these strange symbols. Some are obviously pictures and some are stylised symbols. It is generally accepted that the Aboriginal language is an oral language and not a written one. Perhaps what we witness when we look at the petroglyphs on those rock structures is the result of an attempt to change an oral language into a written one. We do not look at them as graffiti. If we move forward through history, especially up in the Kimberley again, I can take members to a place in Beagle Bay and other places near Kalumburu to see where the sailors on the *Beagle* came ashore and drew pictures and the name of their ship on the rocks.

The most famous prison boab—there are many prison boabs in the Kimberley—is the one just outside Derby. It has some very old inscriptions on it. As the tree has aged and expanded, they have become quite pronounced. Some of the prison boabs that I have seen date back to the nineteenth century. There are boabs from more contemporary times—the 1970s and 1980s. Nevertheless, the inscriptions add to the character and structure of the Derby tree. Whilst the tree is protected now, and rightfully so, nobody would look at it and say that the inscriptions are graffiti. People look at the prison boab as an historical structure. They try to read what is inscribed on the tree to get a feel for some of the history that that tree has gone through. It is a very old tree.

Other examples of that type of inscription can be found on many rock faces and buildings around the world. Indeed, people in London show with pride some of the graffiti dating back over the centuries that describe some historical events. Some are as simple as people's names from a range of centuries over time.

Industries have developed out of graffiti. Everybody here would be familiar with some of the graffiti that is painted on the walls that separate the Catholics and Protestants in Ulster, Ireland. I have never been there. I am very familiar with one image of a masked gunman. The media seems to flash it up every time there is trouble in Ireland between those two groups of people. I recently saw a television show where both sides of that argument take people on tours along the walls and explain what is behind those pictures and that graffiti.

I have a piece of the Berlin wall at home. The Berlin wall was coated in graffiti. The piece that I have is part of what is called an historical document. The type of graffiti on each side of the wall is completely different. There was not as much graffiti on the eastern side of the Berlin wall as on the western side. People go there specifically to look at it as an historical document.

A lot of modern art and modern media has been based on graffiti. Andy Warhol was widely respected for his contribution to modern art. His work is celebrated at the New Museum of Contemporary Art in New York. A lot of the work that he has done and the images that we have seen certainly have strong links to the graffiti of his era, and they have certainly influenced contemporary graffiti artists and been used in modern-day marketing.

There is a link with graffiti. Some of the members who have spoken in this debate have spoken of the Indigenous involvement with graffiti, and the link between graffiti and people who suffer from substance abuse and live in poverty—people who have ill-disciplined lives as youths. There is actually a subculture that is very strong and

we celebrate it—not all of us celebrate it, but as a general society we not only tolerate it but also celebrate it. I am talking about hip-hop. A multimillion-dollar industry is associated with hip-hop. If we listen to any of the young person's radio stations, we hear it; we cannot escape it. I am an old Triple J fan, but because hip-hop is such a dominant force in the music industry, I cannot listen to Triple J as much as I would like because I am not a great fan of hip-hop. Nevertheless, it has a huge influence on fashion, music and art. Part of the subculture that has evolved around hip-hop involves a degree of graffiti. The questions that then arise are: when is graffiti destructive and a menace and when is it art; what possible future is there for graffiti; and how can it be contained? I do not think we can stop graffiti. Most of the people involved in hip-hop, and certainly the hip-hop dancers I have witnessed, are young white males typically in the age bracket between 12 or 13 years old and 20 or 21 years old. The dance moves that they do become a bit more difficult for people over that age—they risk serious injury. It is quite a sight to see. We recognise the people who participate in that subculture simply by the clothes they wear around town.

When we examine similar subcultures, we find that graffiti engenders a feeling of worth in people; it brings together people with common ideas and values at that stage of life. It is a form of rebellion against society. People of that age take risks. As a society, we exploit risk-taking; for example, we prefer our front-line soldiers to be young people. The reason we exploit risk-taking is that when people are 18 or 19 years old, they think they are 10 feet tall and bulletproof. People of that age are prepared to take risks. Some of us do not grow up. I started riding a motorbike at the age of 13, and I still ride a motorbike. Everything tells me that it is dangerous.

**Hon Ed Dermer:** The most unfortunate ones don't live long enough to find that they're not bulletproof.

**Hon JON FORD:** A lot of my friends found that out. However, most people grow out of it.

The one thing we know about a rebellious nature is that the more pressure that is put on these people, without some sort of outlet to express that rebellion, the more they will rebel and the greater the risks they will take. Then, all of a sudden, the subculture is not focused on art, fashion or camaraderie; it is about us and them—let us take them on. People have talked about increased risks. We have talked about people who put themselves in extraordinary danger by climbing on high-level structures to tag or do more expansive work or by hanging off the sides of trains. They put themselves in harm's way to do those sorts of activities. Then there are the people I think we are really trying to focus on—those who engage in the destructive behaviour of tagging. I suspect that they are a minority; actually, I would be confident in saying that they are definitely a minority. Tagging cannot be described as art or as something that would have value in the future. It is all about rebellion and their fight for recognition. We have to look at why people do this and why they feel that this is the way to express themselves. I was brought up with classical music, so the way I rebelled—it may not sound very rebellious—was to spend a good amount of time playing jazz. I even toyed with punk rock. I had to give away punk rock because my hair was never long enough; I could never quite get the spikes in my hair. To my parents, I was a radical. When I grew older and had children of my own, I found that when they reached that age, their rebellious nature was expressed through grunge music and some very strange demonic sounds. I am sure that my father thought it sounded like demons when I played jazz!

**Hon Ed Dermer:** You didn't bring your saxophone along?

**Hon JON FORD:** No, I did not.

The way that I developed my relationship with my children was not to stamp my feet and say that they were wasting their time with that music; I encouraged them by giving them an outlet. I gave them access to the best teachers they could possibly have. I gave them the best instruments that I could afford. I used to drive them all over the place so that their bands could play and rehearse. On the weekends my house was full of all sorts of strange young men and women playing all sorts of weird and wonderful music. I remember sitting on the driveway with my wife and reading the Sunday paper while all this activity was going on in the house and coming to the sudden realisation that perhaps we should just leave them there and buy another house.

An important point is that punitive measures are only part of the answer. The threat of imprisonment and increasing fines are only part of the solution. We have to give these people an outlet. This has been tried in other jurisdictions and there has been some limited success. Some talented artists who incurred the wrath of the community and suffered punishment have, with the right encouragement, now found themselves in the mainstream media market. Victoria and New South Wales have painting walls; in fact, people are encouraged to express their artistic talent at some public buildings. It is quite a competitive area; people have to show that they have some talent before they can paint on these buildings. We have to invest some money in these young people and assist them to find other outlets for what can and does turn into pretty destructive and isolating behaviour.

As I have said, I support the bill, but I do not know how the heck we can describe a graffiti implement. If we take away their access to a brush or a spray can, as sure as eggs they will find something else. Everybody will

remember, I hope, that fantastic Pro Hart television advertisement for carpet, in which he sprayed cans of baked beans and cans of paint —

**Hon Ed Dermer:** He had a marvellous dragonfly at the end of it all.

**Hon JON FORD:** That is exactly right; it was a marvellous dragonfly, which is a feature of many of his famous paintings. That is an example of the creativity that these young people can come up with in pursuit of their subculture. These young people are far more ingenious and can react much more quickly than we can in this place. We are constrained by the rules of Parliament and by law. The fact that these young people are rebellious in nature and see risk taking as worthwhile means that no matter what we do, they will be one step ahead of us. Why do we not try to harness that energy? What can we do to exploit, for their benefit, that rebelliousness and risk taking? Risk taking can come in many shapes and forms. It can be in the way that people think, the ideological position they take in life and the positions they put to society, the community and their peers. It can be expressed in all the arts, such as dance, music and sculpture. A whole range of risk taking can be expressed and exploited in a positive way for the benefit of the whole community. That is the point we are missing with what we are trying to achieve here. This is only one part of the response.

The bill creates a defence that can be relied upon if an accused person believed on reasonable grounds that the purchaser of a graffiti implement was not a child. I understand what we are trying to do here, but there seems to be a basic assumption that only children are involved in graffiti. Even under the lawful definition of a child, I do not believe that is the case. In fact, experience tells me that the people who make grander expressions of graffiti have been at it for a long time. The size of some of the murals means that a great deal of planning must go into them. There is the whole process of how such works will look when constructed. When people are standing only 18 inches away from a wall they still have to have in their mind's eye what the finished work will be. Not many young or older children will have developed these skills. There certainly needs to be a defence for people who find themselves in a position where they are accused of selling a graffiti implement.

The bill doubles the existing penalty to a maximum of two years' imprisonment and a fine of \$24 000. If people are willing to hang off the side of a train travelling along rail tracks at 80 or 90 kilometres per hour, the last thing they will be thinking about is a term of two years' imprisonment or a fine of \$24 000. They will have already made up their mind that they are going to do it. Notwithstanding my earlier comments that I think there is an expectation from the community that we should do something, I do not think that this will work for all those other reasons. These people already have a predisposition to rebel and risk take, which is demonstrated by their behaviour.

**Hon Ed Dermer:** Recent research has indicated that frontal lobe development may not occur until someone is about 25 years of age. Surfing trains would stand as evidence to support that.

**Hon JON FORD:** Hon Ed Dermer is absolutely right. I did see that. That is why I was hinting that as a society we already exploit that risk taking in that we first place young men and women at the front line to fight our wars because young people will put themselves at risk much more easily than older people. In fact, for fighter pilots in the air force, there is the term "losing the edge", which is applied when people are taken off fast jets and put into transport planes. There needs to be a certain amount of risk taking for a fighter pilot to be effective.

**Hon Ed Dermer:** The more mature ones are flying Hercules while someone else is taking on the front-line fighters.

**Hon JON FORD:** We do not see old men or women flying fighter planes, and people never have done. In the First and Second World Wars it was the young men who jumped out of the trenches and out of the landing barges, and it was the old men at the back who egged them on. It was not until we lost a generation of young men that the older men started to replace them.

**Hon Ed Dermer:** Older men are more likely to be senior officers.

**Hon JON FORD:** That is not always the case. I should get back to the relevance of graffiti, but that is a good demonstration of risk taking. What is the greatest risk? Is it risking being splattered over the front of a train, being electrocuted, falling off a high building, being hit by a car or being hit by a car while trying to paint the side of a bus, or is it risking two years' imprisonment or a fine of \$24 000? Most people involved in graffiti will not even know it is a risk to contemplate. We can fool ourselves in this house that society spends its whole time looking over the Criminal Code and the penalties involved for certain offences, but the fact of the matter is that we and the judiciary are about the only people who do that. There will be some media interest at the time it is implemented or at the time someone is arrested. I suspect that when the first person gets arrested for this offence and is threatened with two years' imprisonment or ends up with a penalty of two years' imprisonment, the only thought in the minds of the other young people involved in the more destructive aspects of this subculture will be that it is not them. They will not be thinking that they should really consider \$24 000 because it is a lot of

money. They are probably thinking that they have got nothing so nobody can take anything from them. They will not consider the two years in jail because it has happened to another person and not to them.

This brings me back to the point that in all these matters we must have reward as well as punishment. I have yet to see successive governments in this state deal with graffiti by placing the same emphasis on a reward, or a carrot, as on a stick. However, I think the police genuinely try to encourage young people who find themselves involved in the more destructive behaviour to channel their efforts into more positive behaviour. We can see that with the PCYCs in the state. Blue Light discos, run by the police, have a large participant base of young people. There are also good examples of the police channelling young men, and increasingly more young women, into contact sports such as boxing and martial arts. We can argue about the benefits and disadvantages of those activities, but if they are conducted in a controlled environment, the development of pride in their skills could entice them back into mainstream society. They can even turn those skills into a very profitable career, and, through their careers, they can assist the next generation of young people.

**Hon Ed Dermer:** The elements of discipline and tradition necessary to learn martial arts are also very helpful.

**Hon JON FORD:** That is exactly right.

I will not label these young people as troubled. Many of them are normal young men and women who are at a difficult developmental stage and really need assistance, guidance and a sense of belonging, rather than being pushed further out onto the fringes of society.

A personal example that I will cite is that of my experience with motorcycles. As a young fellow, I became involved on the fringes of the subculture of motorcycle riding and racing, and I came to know many people who were involved in outlaw motorcycle gangs. I still love motorcycles, motorcycle racing and mechanics, but my experience gave me an insight into part of that subculture that has no place in our society. To a young man, especially somebody who was in the Air Force and was encouraged to be gung-ho and take risks, it was a very, very attractive pastime. By going into motorcycle racing, I developed my riding skills, which assisted me on the roads from a defensive point of view and made those skills second nature, which is needed on gazetted roads. I also managed to move away from the more destructive elements of that subculture. I can see why the Western Australian community expects us to take stronger action when setting penalties to discourage offenders, but we need to encourage these young people into a more productive lifestyle, whilst developing their skill bases and bringing them back into society. I have no information on the demographic of these people, but I imagine that many of them do not have such a great time at home. They probably derive enjoyment in their lives by expressing themselves in their graffiti and taking these risks. It may give them a feeling of having some control over their lives that they might not feel they have at home.

The opposition supports the Criminal Code Amendment (Graffiti) Bill 2009, but it hopes that this and future governments can strike a balance between cause and effect, and try to improve society's ability to encourage and nurture our young people and the subcultures around mainstream society so that they play a more positive role in society.

**The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm):** Before we proceed, I take this opportunity to acknowledge the presence in the President's gallery of the Deputy Speaker of the House of Commons, Sir Alan Haselhurst, and Lady Angela. I welcome both of them on behalf of the Legislative Council, and I wish them well and trust they will enjoy their stay in Western Australia.

[Applause.]

**HON HELEN BULLOCK (Mining and Pastoral) [2.56 pm]:** I rise to support the Criminal Code Amendment (Graffiti) Bill 2009. Over the past few days we have heard lots of contributions to the second reading debate during which lots of good points have been made. I hope the government takes those points, as well as members' concerns, into account. I will not repeat the concerns of members, but I will add a few more.

There can be no doubt that graffiti is a serious issue that must be addressed. The clean-up of graffiti costs local and state governments about \$25 million per annum. The 2009-10 budget of the City of Kalgoorlie-Boulder allocated \$90 000 to a graffiti response unit, and a further \$200 000 for the upgrade of the closed-circuit television systems around graffiti hot spots, making a total of \$300 000 for a small place like Kalgoorlie-Boulder. That city has a population of 30 000, so graffiti costs an average of \$10 a person—a lot of money.

Graffiti generates a great deal of anger and frustration amongst business communities, with many business owners having to spend countless hours cleaning tags from the front walls of their shops and business premises to make them more presentable. The cost of purchasing the chemicals and equipment needed to clean up graffiti also places a considerable burden on any business.

The question to be asked is whether these issues will be resolved with the passing of this bill. The explanatory memorandum very clearly states that this bill does four things. However, if one takes away the definition of a graffiti implement or the other mumbo-jumbo, it does only two things. The first is to off-load the burden of graffiti to business owners, by making it an offence to sell a graffiti implement to a child. The second thing it does is impose higher penalties on people who carry out graffiti by increasing the maximum financial penalty to \$24 000 and the period of imprisonment to two years. Two years' imprisonment will not benefit any offenders in any way, but it could have the potential to turn graffiti offenders into serious criminals. For petty offenders, our prisons can be a school or education institution of a different sort; different from our mainstream education system. I am sure honourable members know what I mean. A penalty of two years' imprisonment —

**Hon Liz Behjat:** That is the maximum.

**Hon HELEN BULLOCK:** The member has had her go; now it is her turn to listen!

Sending young offenders to prison will not serve the purpose that this legislation purports to serve. Putting people in prison also costs taxpayers a lot of money. In terms of a fine of \$24 000, I wonder how many offenders could afford to pay that fine. If offenders are not going to pay the fine, does the government want to send them to prison?

We must think about innovative ways. We need to think about long-term solutions to those problems, alternative ways—not just harsher punishments. For example, please allow me to suggest to members such alternatives. We could run targeted educational programs. Instead of allocating extra funding to Corrective Services, why not allocate those funds to education agencies to raise awareness among young people that graffiti is not art; it is a criminal act? We could run some art appreciation classes in schools to help young people differentiate between tasteful art and destructive art such as graffiti. Maybe we could channel that so-called artistic expression into some genuine artwork, with proper guidance from qualified art teachers. We could also run similar education programs in our remote Indigenous communities. Members will probably say I am too idealistic, but I cannot see an alternative. Why do we not just give it a go?

There have been a lot of extreme views expressed in this chamber. I would like to add one of my own to the list; that is, in my opinion education is the key to solving most, if not all, of our social problems.

**HON MATT BENSON-LIDHOLM (Agricultural)** [3.03 pm]: Members, I likewise do not intend to speak at length about the Criminal Code Amendment (Graffiti) Bill 2009. I do not think it is necessary. The words that have been spoken by a number of members certainly clarify many of the issues that I have with this bill. Significantly, if I can sum up immediately, this bill is more about punitive measures than necessarily providing the framework to go forward and address this very significant issue.

I do not purport to know a heck of a lot about graffiti. I do not even think I own a spray can of paint. I never was the greatest artist either. I reckon, as a reasonable sportsman, I might have been able to draw a deep breath—that is about where it started and finished.

**Hon Simon O'Brien:** The member has many talents.

**Hon MATT BENSON-LIDHOLM:** It certainly had nothing to do with artwork; I can assure the minister of that! Whatever those talents may well be, I will leave that to the minister!

**Hon Simon O'Brien:** You are a form of artist; no doubt about it!

**Hon MATT BENSON-LIDHOLM:** I support the broad intent of this bill. I am a bit concerned about why the government has drawn out the entire proceedings in the first place. Every government member who spoke saw fit to aim criticism at the opposition benches. I suppose we do take that on board, but it becomes somewhat counterproductive when something like seven speakers basically sing from the same hymnbook when it comes to that point.

My suggestion to the government is that these issues are very complex. I will speak from personal experience. My home in central Albany is close to nightclubs and so on. My place has been defaced by graffiti and I have had to get out and clean the mess up. I know there are enormous costs to private individuals and there are costs to schools. As members would appreciate, the costs are quite significant. There are disincentives. There are many issues associated with this problem that we have in society. Hon Phil Gardiner gave a very Dr Spock-like dissertation about the issues that we have. I will be honest with members: I see the points that Hon Phil Gardiner made as being very productive in giving the government some sort of direction about where we need to go to post this bill.

It is not a simple problem; it is a very complex issue. I will point to one example of how complex it is. I suppose it gets back to the definition of “graffiti”. I am sure most members here would have gone up to the media part of

the gallery of this chamber, and indeed the other one—particularly, dare I say it, in the other place—and looked at the sort of graffiti nonsense that is there. I do not know whether members want to call that graffiti, but certainly the destruction that has occurred in this place is indicative in some respects of a way of thinking that I do not understand. I have not travelled to many parts of the world and taken a heck of a lot of notice of graffiti. It might say something about Australians, but it is certainly an issue that perhaps warrants, with the follow-up that I am suggesting we pursue, some sort of education program.

I do not believe, as Hon Helen Bullock has said, that whacking big fines and possibly sentencing people to jail is necessarily the complete answer. I can understand the frustration. I have been there; I have experienced graffiti myself. Certainly, as a former high school teacher and administrator, that was often the case in a relatively small country town in the great southern part of Western Australia. I understand the frustrations. But I cannot honestly see that charging an uncle, an aunty, a father, a grandfather or someone else who is 18, 19 or 21 years of age with providing a juvenile with a spray can, which in turn that juvenile decides to use on someone else's fence or wall—or he may have scratched a bus or a train or whatever else—is the ultimate solution.

It is probably a bit like mandatory sentencing. The community is crying out for solutions, but to think that the mandatory sentencing bill that recently went through is going to solve all the problems associated with assaulting police officers, for instance, is quite silly. It is just not going to happen. It will make some of us feel better. I think that is what the bill before us purports to do. It makes people in the broader community happy about things. Someone is seen to be paying the penalty for a very unsociable sort of act. I can understand that. However, I get back to the point that I made: what we need to do is put in place structures whereby we can make sure that in the years to come we stop graffiti. I suppose I am a bit of a realist in that I do not think it is necessarily possible that that is going to happen. There seems to be a fine line in some communities or societies between graffiti and art. But if we do not stop graffiti, I certainly would like to see progress made towards minimising the damage, the costs, the inconvenience and the time associated with cleaning it up. Generally speaking, there is an acceptance in certain parts of the communities in which we live in and/or represent that graffiti is good. I think most of us would accept that when a person leaves graffiti on a wall of his home or his workplace or wherever else, it simply encourages the people who engage in that type of antisocial behaviour to continue to do it. These issues are obviously very important to us. We know that graffiti will continue and that it will impose significant costs on society.

**Hon Simon O'Brien:** You have expressed your concern about it. What do you think should happen to people who carve things on the bench in the press gallery?

**Hon MATT BENSON-LIDHOLM:** That is a very good question. Maybe rather than putting an answer on the record right now, perhaps the Deputy Leader of the Opposition might like to give serious consideration to the matter. I am sure that he understands the point I am making. I do not necessarily think it is the sort of thing that we need to debate here and now. A government member came to me some time ago when the Criminal Code Amendment (Graffiti) Bill first reared its head and made that point to me. The member was very concerned about taking people there, even though the public are not supposed to be taken to that place. The fact that there is graffiti there is concerning.

**Hon Ed Dermer:** The trouble about the graffiti upstairs is it is very tasteless and very offensive.

**Hon Peter Collier:** Some of it is also quite creative.

**Hon MATT BENSON-LIDHOLM:** There is a fine line.

**Hon Simon O'Brien:** Depending on who was speaking at the time, they are probably quite justified calls for help!

**Hon MATT BENSON-LIDHOLM:** I dare say that the Deputy Leader of the Opposition's name was not even dreamt of in those terms!

I will comment on some of the statements made in the second reading speech. The government made an election commitment to do something about graffiti and I commend and acknowledge the government for that. We all acknowledge that the issues associated with graffiti vandalism are a significant concern. The second reading speech states —

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.

I put it to members that the efforts made by members on both sides of the chamber and, indeed, in both houses, are often reactive. This bill is somewhat of a reactive bill. The comments in the second reading speech are ad hoc. The government has again responded in a knee-jerk reaction to the pressures brought to bear on it, as with the mandatory legislation, by a very concerned community. Members of Parliament are vested with greater responsibilities than to just react in an ad hoc and knee-jerk way when trying to achieve what the general

community seeks to achieve. There must be more substance to it. The bill certainly provides a deterrent effect and preventive function. The deterrent effect is necessary but imposing punitive measures that increase fines and possibly impose jail sentences on offenders will not stop graffiti. I acknowledge the seriousness of the crime. There is no problem in that regard. The personal costs are also mentioned in the second reading speech. As I said, I can attest to that. The minister, in his second reading speech, also said —

Agencies and stakeholders such as local governments, Main Roads Western Australia, Perth Transit Authority, Water Corporation, Western Power and Telstra all operate programs to combat graffiti.

This is a huge issue. I watch Eagles football games as often as I can. Sometimes I travel on the train from Victoria Park to West Leederville. I agree with Hon Ed Dermer when he said yesterday that the extent of the graffiti on Western Australian trains is a massive concern for us all. Multifaceted programs need to be put in place. A cross-agency, government-focused approach must consider why young children in particular get bored and do these sorts of things. Hon Philip Gardiner said that there are underlying social issues. It is not the domain of the Water Corporation, Western Power or Telstra to determine what those issues are; it is the role of government to come to terms with the underlying causes that see our young people in particular do these things. The most amount of destruction is caused by a relatively young group in society. Let us be honest about it, imposing punitive measures and getting the Water Corporation or Public Transport Authority to find a solution to this problem is nonsense.

Any attempt to address the issue of graffiti is good. However, as I have just indicated to members, if the approach is not multifaceted and does not look at the root causes of the problems in society, it is doomed to failure, just like the mandatory sentencing bill will not necessarily stop people from belting police officers and the like. I suggest that we should look at the causes rather than the symptoms of the problem. I can understand why people want to take punitive measures because society does not want to put up with the sort of nonsense that it has had to put up with. However, I urge the government to think long and hard about the issues raised by members on this side, and some of their own members, and look at the underlying causes and reasons for graffiti. Let us put in place procedures, programs and strategies that will build upon the measures contained in this bill.

**HON SALLY TALBOT (South West)** [3.18 pm]: We find ourselves, on occasions, having some quite surprising debates in this place. I had not intended to speak on the Criminal Code Amendment (Graffiti) Bill 2009. However, sometimes we hear contributions during the second reading debate that spark ideas and take what we thought was perhaps going to be a relatively fast-tracked debate into areas that perhaps members had not thought of before.

**Hon Michael Mischin** interjected.

**Hon SALLY TALBOT:** That is okay, Hon Michael Mischin. After he has been here for a while, he will find that occasionally members get caught up in the debate.

I want to make what is, for me, a spontaneous rather than a well-prepared contribution to the debate.

**Hon Michael Mischin:** I will not stifle your creativity.

**Hon SALLY TALBOT:** I appreciate the member's cooperation. I am sure that members are looking forward to hearing his summary of this quite extended debate. Without speaking for my colleagues, who are quite capable of speaking for themselves, as they have demonstrated quite ably, it is fair to say that the support for this bill on this side of the house is based on a fairly self-evident observation that graffiti is a big problem for our community. There is nothing quite so confronting, apart from perhaps physical violence, as coming out of one's house in the morning and finding some additional decorations on the outside. I had that experience a few years ago when I lived in Victoria Park and came out and found a series of what I now know are called tags on fences and lampposts down the street by my house. One of my big frustrations about graffiti, apart from the cost of the clean-up, is its unreadability. I stood there for some hours trying to work out what the tags said, and whether it was anything interesting. In the end, I took the advice of some of my son's friends and accepted that it was just tagging and was not supposed to be actually sending me any message.

I realise that this is a difficult time to be speaking in an extended debate, when members are just getting their tastebuds worked up for their cucumber sandwiches at afternoon teatime. However, one of the things that have brought me to my feet is that I have detected certain sentiments in the words of some of the government speakers on this bill, of whom we have had rather more than would normally have been expected. While there has been a considerable amount of sincerity and well thought out comment, particularly from some of our colleagues in the National Party, from some of the Liberals we have heard what I think on occasions have tended to be some fairly simplistic conclusions being drawn about graffiti. To summarise that, it is probably best expressed by the words of Hon Brian Ellis, who said that, purely and simply, graffiti is vandalism. Why do we not just call it vandalism and address it as the crime of vandalism? Everybody on this side, beginning with Hon Kate Doust, who made a

very interesting second reading contribution, has pointed out that perhaps things are not quite as straightforward as that. In that context, I paid particular attention to what was said by Hon Ed Dermer. He caught me slightly by surprise when I walked into the chamber one evening and found him on his feet holding a copy of the *Macquarie Dictionary*. I understand that in the American Senate, where there is a common practice of filibustering legislation, on one occasion a senator stood up and read through every single constitution of every single American state.

**Hon Ken Travers:** Did they have graffiti in them?

**Hon SALLY TALBOT:** I do not think there was anything to do with graffiti, but one can imagine the debate in the Australian Parliament in which some equivalent references might be made to make sure that every consideration of every state had been encompassed. We of course would not engage in anything of that nature on this side of the house. My son, who takes a forensic interest in American politics, also tells me that on one occasion a senator stood up with a very large recipe book and read every recipe from beginning to end, including the lists of ingredients and all the methods. I suppose that might have had something to do with what Hon Ken Travers has been to today—the physical activity task force. I guess one could make contributions along those lines.

**Hon Ken Travers:** It is interesting that you mentioned that, because they actually talk about the interrelationship between physical activity and mental health. I just wonder how much it would actually also relate to graffiti prevention.

**Hon SALLY TALBOT:** That is an excellent point made by Hon Ken Travers, and in a sense it encapsulates the points we have been trying to make on this side—not just trying to make, but making quite effectively—that the whole —

**Hon Ed Dermer:** In my defence, I only referred to one of the definitions in the dictionary.

**Hon SALLY TALBOT:** I know the member only referred to one definition, and I was just about to return to that, but I will first address the point that Hon Ken Travers made, then I will return to Hon Ed Dermer.

**The DEPUTY PRESIDENT (Hon Jon Ford):** Order! There is an underlying rumble in the chamber. We are having a debate, not a general discussion. I know it is the end of a long session, but we do not have that long until afternoon tea. It is very hard for Hansard to hear what is being said if everybody is talking.

**Hon SALLY TALBOT:** Perhaps it is a perpetual rumble of appreciation for the fact that this debate is going into such detail.

Several members interjected.

**The DEPUTY PRESIDENT:** Steady, members! Do not encourage interjection.

**Hon SALLY TALBOT:** Hon Ken Travers, in his interjection, which I was more than happy to take, pointed out that the event he has just been to made a connection between physical and mental wellbeing. Perhaps this is one of the points the government should be addressing in its attempt to combat graffiti. That summarises pretty well what we are saying on this side. Although we will be supporting this bill because it is a step in the right direction and it will be supported by the community, it is yet a fairly blunt, crude instrument. I absolutely support the remarks that my colleague Hon Kate Doust made at the end of her second reading contribution when she suggested that at some stage—perhaps after 12 months—we should have a review of these amendments to see just how effective they have been.

I know that Hon Ed Dermer is getting nervous about the fact that I might have forgotten that I referred to him, so I now come back to address those points about him using the dictionary to look up the word “empathy”. I know that he was making a very good point, and there was not even a trace of filibuster about what he was doing. His point was that, although acts of graffiti cause distress to us, whether walking outside our houses and finding something daubed on the fence, sitting on a train and seeing that the windows have been scratched, or whichever way we encounter graffiti —

**Hon Peter Collier:** Or on your electorate office.

**Hon SALLY TALBOT:** Or daubed on our electorate offices. Indeed our colleague John Quigley, the member for Mindarie, was the victim of a very aggressive act of graffiti vandalism on his personal property.

**Hon Kate Doust:** They couldn’t even spell his name properly.

**Hon SALLY TALBOT:** As Hon Kate Doust says, they even misspelt his name, but I think he still knew that they meant him.

The point Hon Ed Dermer was making was that the distress that graffiti vandals cause to us, according to research that has been done into the mentality of the people that gives rise to these acts, largely arises from a lack of empathy—the lack of the ability to put oneself in somebody else’s shoes and appreciate the distress that might be caused. That point was very well made by Hon Ed Dermer, but I want to take it a bit further and suggest that, with a whole range of offences, from the most violent to the comparatively trivial, it seems to be a common trait amongst the perpetrators that they are not able to put themselves in somebody else’s shoes.

I once wrote an entire chapter of a book on empathy. I pointed out in that chapter that it is a bit of a fallacy to ever be able to say to somebody “I know how you feel.” In fact, if we think about our own life experiences, in a situation of real distress the last thing we want is somebody saying that they know how we feel, because often our first reaction is “Well actually, you don’t.”

**Hon Ed Dermer:** Is partial knowledge, or empathy, possible?

**Hon SALLY TALBOT:** Yes, I think types of empathy are possible. Perhaps it is better to talk about sympathy than empathy. Empathy is a very complicated concept. I am suggesting that, just as it is a complicated concept, it is a very complicated issue to deal with. The fact is that people committing offences of all kinds are often, to a greater or lesser extent, alienated from those around them. They are not able to say, “I know how you feel” when they walk away from the events they have created and when they look at their victim.

**Hon Ed Dermer:** Alienation can be linked to that as well.

**Hon SALLY TALBOT:** That is exactly right. They are not able to say, “If I put myself in your shoes, this is how I would feel.” That is one of the reasons why our courts have introduced the concept of victim impact statements in court in recent years. I do not think victim impact statements are made until after the judgement.

**Hon Ed Dermer:** I think that is correct.

**Hon SALLY TALBOT:** They are part of the sentencing process and an attempt to stand before the perpetrator and say, “This is what it feels like for you to have done this to me.” That is just one more illustration of how complicated the whole issue of graffiti is and why our reservations on this side of the house can be summarised as saying that we think that this is a blunt instrument and is a bit crude. We think that the government is probably responding to community concerns in a direction that the community is happy to see it go in. Like the community, the opposition will be watching very carefully to see just how effective these measures are.

Often when we are faced with these very complicated problems, not just as legislators and parliamentarians but as leaders in our community, a bit of lateral thinking is called for. A bit of lateral thinking can sometimes go a very long way, lead us in unexpected directions and have results that perhaps we would not have had if we had adopted blunt, crude instruments of control. One of the examples that I recall was described to me by a teacher. I will not name the school but it was a district high school in the outer suburbs of Perth. It had an ongoing problem in the girls’ toilets. The girls went into the toilets at lunchtime and put on layers of lipstick and then kissed the mirrors. There has been a lot of talk about lipstick in this debate; that is probably what reminded me of this story. I do not know how many members have tried to clean lipstick off mirrors. It is very difficult because lipstick, by virtue of the way it is constituted, is supposed to stay on. It is not supposed to come off when we lick our lips. I think a lipstick is yet to be invented that does not come off when we lick our lips but it is being worked on. We can send people to the moon but we cannot invent a lipstick that stays on. However, it does stay on mirrors and it is a real task to get it off. This had been going on at the school for several months. All sorts of things were tried to stop it, including notices being put up asking students not to put lipstick on the mirrors. They tried random raids by teachers in the girls’ toilets and still mirrors were being covered with lipstick. They tried peer monitoring. Nothing was working. One day the principal had a brainwave. He wrote on a little sticker, which was then fastened onto the mirrors, “Please note. As from today, these mirrors will be cleaned with toilet brushes.” Guess what happened? Nobody kissed the mirrors again. That is an example of how, if people think outside the box, calm down a bit and brainstorm, we can come up with a 100 per cent effective solution. There was no imposition of the rules, no extra resources were needed for policing and the problem was solved. It cannot be beyond us to make our instruments a little more sophisticated than this bill seems to be.

I have already referred to one of my frustrations with graffiti. When it was done to a place that I was living in, one of my frustrations was not being able to read what it said. We have already had references in this debate to windows on trains being scratched. I think Hon Kate Doust said that on the inaugural trip from Perth to Mandurah it was obvious that the graffitiists had been all the way along the track and had tagged all the sheds. One of the things that I have noticed is that the places where we see graffiti suggest that the people who are responsible for it are taking the most enormous risks to their own personal safety. They are climbing on structures and hanging off bridges and they are in places all along the freeway where pedestrians are not allowed to go. These people are prepared to put their own personal safety at considerable risk to make their point. That

adds to the theme that was introduced by Hon Ed Dermer about how alienated people are when they are doing it. There is another explanation. There was a recent TV series about being teenagers. I think it was called *Whatever!*

**Hon Sue Ellery:** Yes, *Whatever!*

**Hon SALLY TALBOT:** I do not know whether *Hansard* can pick up the exact intonation with which that was said. The first episode that I saw showed that when we measure the perception of risk, we can demonstrate empirically that teenagers perceive less risk. The experiment I saw involved an adult male and a boy aged about 14 or 15 years. They were presented with a series of images and had to tap “risky” or “non-risky” buttons. It was pretty straightforward. It was not a terribly sophisticated experiment. They were shown identical pictures. When the reactions were added up, the adult reacted to significantly more things that were seen as potentially risky than the teenager did. I would have been interested to see that experiment replicated with gender taken into account because I suspect there may be a different perception of risk between adult males and females and between teenage males and females.

**Hon Ed Dermer:** That might relate to the different policies that insurance companies develop and the risk assessment they do.

**Hon SALLY TALBOT:** Yes, indeed. One would not want to be a young man looking for insurance for a red sports car, for example.

There are two elements to what is going on here. I am not sure that I want to make some of the very broad assumptions that have been made by some speakers in this debate, such as Hon Philip Gardiner, about who is doing the graffiti. I do not want to go quite as far as that. I think we can make an assumption that the people who fit into the category are probably young risk-takers. They may or may not also be alienated from their societies. That adds up to a pretty dangerous situation.

I was talking about the train trip to Mandurah, where graffitiists have already been at work. We need to look at the sort of explicit or tacit encouragement that we are providing to graffitiists. The other day I drove on a large section of the new Perth-Bunbury highway. I noticed that all the granite-grey material underneath the overpasses—at least the ones that I saw, where a minor road goes over the highway—have been decorated. They are patterned and coloured and they are quite attractive. This is a relatively new thing. We know we are getting to the category of no longer young when we remember the previous section of the freeway opening. I might remember the one before that. When I first moved to Perth, I think the freeway stopped at South Street. I certainly remember that when the section of the Kwinana Freeway to Safety Bay Road was built many of the overpasses were very unattractive to most of us, in that they were just left as great big grey concrete slabs in the middle of nowhere, but of course they were extremely attractive to a graffitiist, who would have seen them as a blank canvas. I think, therefore, another degree of complexity is introduced into the whole issue of restraining graffiti activity if we look at the effect that our lack of public art might be having on the level of graffiti. We leave large, drab public spaces that are unattractive for us as non-graffitiists but that provide an open invitation to people who have a spray can in their hand. Just as I have given honourable members that illustration of lateral thinking, with the story about the lipstick on the toilet mirror, maybe we need a bit of lateral thinking here. Maybe we can have a serious look at what we do with public art. I have a colleague who works for Bunbury Regional Art Galleries, whose lifelong commitment as an artist is to increase the percentage of public art and increase the percentage of funding in every project that is set aside for public art. I believe that is an issue that cannot be set aside from the whole topic of graffiti.

I want to move on to the topic of what exactly is graffiti. As I said, I thought that Hon Brian Ellis’ characterisation of all graffiti as vandalism was perhaps a bit too much of a blanket statement to encompass what graffiti actually consists of. Before I got to my feet, I was slightly distracted because, to the horror of one of my staff, I admitted this morning that I had only just heard about someone called Banksy. The staff member took it upon himself to enlighten me and sent me a whole series of Banksy’s cartoons from the internet. They illustrate beautifully the next point that I want to make, which is that as politicians we have to acknowledge that graffiti plays an important role as an integral part of political debate, the political cultural heritage in which we situate ourselves and the whole cultural history of politics. I am happy to table these, although I suspect that my lack of education is being remedied much later than most members of this house who are perhaps more familiar with this work than I am. For instance, I am looking at a piece of graffiti here. I believe, on the basis of conversations I have had, that this comes from somewhere on the Israeli-Palestinian border. It is a most complex, beautiful drawing of a dove with an olive branch in its beak. It is wearing a military uniform. I am happy to table it if it is of any interest. I seek leave to table the document.

Leave granted. [See paper 1316.]

**Hon SALLY TALBOT:** There are many other images here. One that particularly appeals to me is that of a maid in a full maid’s uniform who is holding up what appears to be a curtain over the wall and is sweeping stuff

underneath. This is beautiful work. Every one of these works of art can clearly be classified as graffiti, but they also very clearly make graphic political statements. I would hate to see us going down a path where we stifle that form of political commentary.

**Hon Brian Ellis:** If it is requested, I think it is fair enough to do that, but surely you are not promoting graffiti.

**Hon SALLY TALBOT:** That is a very important point. I draw the distinction with a graffiti artist, because I recognise that the point that Hon Brian Ellis made about the connection between graffiti and vandalism is a very valid connection to make. If we are talking about a graffiti artist, it seems to me that some of this work might be done in a way that does not necessarily take into account who owns the property, what remedies might be sought by people or what tenure there is over the land. I think the whole essence of graffiti is a degree of spontaneity.

Debate interrupted, pursuant to standing orders.

[Continued on page 7649.]

*Sitting suspended from 3.45 to 4.00 pm*