

CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009

Second Reading

Resumed from 10 September.

Point of Order

Mr M. McGOWAN: My point of order is that the member for Perth, who I understand wishes to speak on this bill, is not in his seat and I want to make sure that he has the opportunity to speak on this legislation.

The SPEAKER: A very coherent point of order. Members, the question is that the bill be now read a second time. The member for Perth.

Debate Resumed

MR J.N. HYDE (Perth) [5.06 pm]: I am delighted that finally I have the chance to speak to the Criminal Code Amendment (Graffiti) Bill 2009, although there has been a sudden change to the batting order.

Dr G.G. Jacobs: You were complaining earlier that it had not come on for debate.

Mr J.N. HYDE: I wanted to deal with the minister earlier, but he went to the back of the chamber. He would not stay at the table of the house. He gave up. I did not have the chance to have a go at him properly about container deposit legislation. Therefore, I will go back to him later when debate resumes on that legislation.

I am now talking about graffiti. I urge the government to tread cautiously with this bill, which the opposition supports. The comments that have been made by some members indicate that they fail to understand the difference between art and graffiti art. I was alarmed by the statements of some members that all graffiti was, by its very nature, illegal and should be stamped out.

To consider the first appearance of basic graffiti art in this state we need look no further than at the Burrup rock art. Initially people might have judged that artwork as graffiti. It was put on walls and areas of ceremonial and sacred significance. Today we know that much, if not all, of the Burrup rock art is incredibly important. I add that in terms of a contemporary context.

I refer to the development site next to my electorate office in William Street. The area has had a tremendous renaissance, with the plane trees and the paving of the Town of Vincent and now the City of Perth is continuing that further. While the development is being prepared on the site next door to my office, there are huge expanses of bare walls, including along the side of my electorate office. The owners of the development site encouraged graffiti artists to come in and undertake particular art on this site to ensure that it would not be subject to graffiti that we would regard more as vandalism; that is, graffiti that we should term illegal, which it is hoped will be not only eliminated but also deterred by the passage of this bill.

As legislators we must realise that the best legislation is about not the penalties that should be put in place, but about the lack of provision for convictions. The legislation should be so good that it is embraced by the community as a whole because it encapsulates and provides a deterrent. That is the true value of good legislation. I certainly hope that that is what this legislation will do.

Some incredibly talented artists have painted the rear wall of the development block next to my office, an expanse of about 40 metres. I regard it to be significant and beautiful art, but it is graffiti. It has been done with the use of spray cans and other instruments which, through this legislation, we are trying to ban. Rather than prohibit the sale of the actual implements, such as cans of spray paint, surely we need to target the use of those implements? In our society today we seem to take the easy way out in many things: confiscating hoons' cars, with some people in this place seeing the answer in squelching and squashing every car they see, whereas we should be looking at the offending behaviour rather than cars people are using. And in other social issues, such as drugs, we should be looking at misuse, not use.

Members should look at the wonderful artwork in the inner city area of Perth. One of the artists who was working there this week relayed a story to me about one of the younger artists who tragically died in the same week that the suicide strategy was launched. I should say "relaunched" because the original strategy was worked on last year and was launched by the previous government. Rather than proposing solutions, the government seems to be relaunching strategies. I was told about the young artist who had taken his life; he was one of a number of artists who was working responsibly in art but in the milieu of graffiti as a form of art alongside impressionism, expressionism, dadaism and other forms of art. Graffiti, when used responsibly and properly, is a form of art. These young artists came to me and said that in about three weeks they want to create a memorial to

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

this younger fellow artist who has died. This legislation needs to differentiate between graffiti per se and the misuse of graffiti.

This legislation is important and one of its important aspects relates to the selling of graffiti implements to children. Again, I caution members about the application of this legislation in the sale of spray paint, pen or marker pen with a tip of more than six millimetres wide. Many genuine artists and many people at the wonderful schools in my electorate use these implements. Under the Barnett government there are no longer any high schools located in the electorate of Perth. The electoral commissioner has moved Mount Lawley Senior High School with its wonderful art facilities and Perth Modern School slightly outside the electorate. However, within those school grounds, minors will be using the graffiti implements that are referred to in this bill: cans of spray paint, pen or marker pens with a tip more than six millimetres wide. Making a new criminal offence for a person to sell a graffiti implement to a child is something I will follow up in consideration in detail to make sure that safeguards are in place so that teachers or others in a remote or regional school, because of the education budget cuts of this government, who are selling art implements to the students will not become victims under this legislation.

I was very lucky on Sunday to attend the opening at another wonderful school—Carmel School—of the wonderful Kadima arts and drama centre primarily for students in Western Australia of the Jewish faith. Carmel School is an amazing facility. Many of my friends in the Jewish community have attended Carmel School, which was first founded some 50 years ago in the electorate of Perth in Brisbane Street—it was the very first Jewish school in Western Australia—then it moved out to the Dianella site where it is today. My federal colleague and friend Hon Stephen Smith, the federal member for Perth—probably our best foreign minister ever—had the honour of officially opening this new arts and drama facility as part of Carmel School. I am raising that matter because within that amazing facility we saw some of the students' work on display. Under this legislation those secondary students would be regarded as minors, as children, and they are producing some pretty provocative contemporary art using what this legislation terms as graffiti implements. It is very important that this legislation not target the correct use of art implements—using spray paint is very much a valid use of an artistic implement—but targets their misuse. It is very important that within the bill and also the regulations that we do not have overzealous police ministers or Attorneys General—after they have eliminated wonderful art projects in proceeds of crime funding—declaring a fatwa on all artistic implements.

All members know the wonderful role that public art plays in crime prevention in this state. All of the research on place management shows that public art has a great benefit. The border surrounding the Perth Arena development in my electorate—that other wonderful commitment from the previous state Labor government—has some pretty amazing graffiti art. The rationale for using graffiti art in a responsible way is that it deters vandalism, and by “vandalism” I mean graffiti that does not make an artistic statement and is there purely to vandalise. By embracing the work of true graffiti artists on the border around Perth Arena, we do not see any graffiti that is of a vandalistic nature. Construction on the internal lift wells on the Perth Arena site has reached four or five floors and we do not see graffiti on those. Modern place management and modern development practice uses proper artwork to deter vandalism and non-artistic graffiti. It is very important that we are mindful of these issues.

Ms M.M. Quirk: There is a very innovative project in an underground car park in a block of units that I think is in the member's electorate. Is the member aware of how that came about?

Mr J.N. HYDE: I am very much aware of that. We went to that opening on a Sunday morning two or three weeks ago. I thank the member for Girrawheen for that very welcome interjection. It was done in a responsible way. That should be an example to all of us. Graffiti is very much like interjections: there can be good interjections and bad vandal-type interjections. The member for Girrawheen, as always, illustrated in question time perhaps a non-artistic —

Ms M.M. Quirk: I think it should be based on whether or not it is funny.

Mr J.N. HYDE: That would have artistic merit as well. Luckily, it is not the member or I who decides that; it is up to the wisdom of the Speaker to decide whether the comedic value of a member's interjection meets the test. On this occasion, the Speaker has allowed the member for Girrawheen's interjection regarding the underground car park in the CBD. Some skilful workers and clients come in and out of that car park all day. A broad, bare concrete environment is not a welcoming environment. It is a matter of looking at the sense of place, and car parks have a sense of place. Graffiti artists and modern artists were encouraged to create artworks for the car park. It is the same as the way we look at the Catholic Church in Italy during the Middle Ages. I visited Padova in Italy where there was some amazing work—I am seeking a learned interjection—was it Bellini? It was not Michelangelo's dome fresco. We have some very basic artwork on the dome in this place; it is more in the

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

Federation style rather than the Italian Renaissance style. Now that I am not allowed to look at my laptop during question time, I must stare at the ceiling. I noted today, Leader of the Opposition, that we do not have Italian frescos.

Ms J.M. Freeman: The artwork you saw in that the car park was featured in *The West Australian*.

Ms M.M. Quirk: It was on *Stateline* too.

Mr J.N. HYDE: That is right. It was lauded and applauded. We have seen graffiti welcomed in the community.

Ms M.M. Quirk: Under this legislation, how will a seller be able to distinguish the purpose for which the artist intends to use the implement or the spray can?

Mr J.N. HYDE: That is a very good question from the shadow Minister for Police. I hope that she will be as assiduous as I will be during the consideration in detail stage. We do not want sellers of these implements to say—just as we have seen with some sly-grog traders—that they did not know what it would be used for.

Ms M.M. Quirk: You have a large outlet near your electorate office in William Street that sells that type of paraphernalia.

Mr J.N. HYDE: I do. I thank the member for her fifth interjection. The early interjections were quality interjections.

Ms M.M. Quirk: I was trying to plug the business for you.

Mr J.N. HYDE: I understand what the member is trying to do but I urge her to desist from that line of interjection! I will speak to the member privately about that issue later.

It is important for members to distinguish, in this legislation, how criminal intent will be proved. Is the onus on the seller, as it appears to be in proposed section 216(1)? The penalty for a person who sells a graffiti implement to a child is \$6 000 for the first offence and \$12 000 for the second offence. The definition of “intent” must be established. We have heard examples whereby the intent can be fudged. Therefore, people who are genuinely exploiting vandals and others will be able to get away with it but others, who genuinely sell these implements as art implements to people who make art in a responsible place with the permission of the owner and for artistic purpose, will not be penalised. At this point, with the agreement of the opposition Whip, I will not request an extension because I know that other members wish to speak on this important issue.

MR J.E. McGRATH (South Perth) [5.25 pm]: I will say a few words on the Criminal Code Amendment (Graffiti) Bill 2009. As members have pointed out, this legislation will increase the penalty for a person who is convicted of causing criminal damage from 12 months’ imprisonment to two years imprisonment and the maximum fine will be increased from \$12 000 to \$24 000. I will raise a point later with the Attorney General about the penalties for people who commit a graffiti offence. The main thrust of the legislation is to prevent retailers from selling graffiti paraphernalia to minors. My view is that the most responsible retailers would not do that. However, we need to shut the gate, just in case there is a possibility of that happening. The courts will be able to order convicted graffiti offenders to pay the clean-up costs. I will recommend to the Attorney General the introduction of a HECS-type system for minors who are convicted of a graffiti offence and who cannot pay the fine themselves, or whose parents are unable to pay the fine. Hopefully, when an offender eventually becomes employed, he can pay back his debt to society out of his wages. That would be a reminder to the offender that he had done the wrong thing. I believe that offenders should be made to clean up their graffiti but I do not subscribe to sending them out in public while wearing a shame vest. I believe that society has moved beyond that point. It would be enough of an embarrassment for a young person to do the cleaning. If we go to the lengths of making offenders wear an orange vest so that others can see that they have committed that type of crime, we will be moving back to the era of putting people in stocks. Young people could also be put in stocks and taken to the Hay Street Mall where people could throw rotten tomatoes at them just because they had made a mistake. A lot of young people do make mistakes. Many graffiti offenders would, later on in life, see the error of their ways. I heard on the radio about a serial graffiti offender who committed about 200 offences. He obviously was not going to learn his lesson. There is a penalty of 12 months’ imprisonment for serial offenders who cause a lot of damage to property. We must be tough on those sorts of people.

Members have already mentioned that the state spends in the region of \$30 million a year to clean up graffiti. Local government spends between \$15 million and \$20 million. The City of Perth spent \$57 000 last year on cleaning up graffiti, which is not bad when compared with the amount spent by many other local government authorities. I think that South Perth is rather fortunate. I do not want this to be a challenge to graffiti artists, but South Perth is reasonably graffiti free. However, the Canning Bridge train station is one area where graffiti has been noticed. The overpasses on the Kwinana Freeway also have graffiti. I do not know how some people manage to get into those positions to place their tags. It is very dangerous, and there is a risk that someone will

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

fall from one of those bridges and be very seriously injured or killed. The point has been raised with me that closed circuit television cameras will be one of the main forms of combating graffiti. I am a great believer in CCTV. I think we have moved on from the time when we thought it was an invasion of privacy to have CCTV in public places and where crimes, such as causing graffiti, might be committed on a regular basis. We should look at introducing them.

People in New York say that they have been quite successful in dealing with graffiti. However, I am sure we would see a lot more graffiti in New York than we see in Perth. People need only go to Sydney and get on a train to see factories and warehouses that back onto the railway line covered in graffiti. Big cities with big populations have so many other problems that maybe graffiti is not at the top of the list of those offences that need to be stamped out. The member for Mount Lawley mentioned that a database in New York has been used successfully. The commander of the Anti-Graffiti Task Force in New York explained that a tag is like a signature. A vandal will do it the same way every time. It means that if there is a database with those tags, the police have a better mechanism for catching offenders. If they find someone who has committed a lot of graffiti offences, that person is obviously a serial offender who needs to be reined in. In New York the Anti-Graffiti Task Force includes representatives from various departments and community groups. The same thing is happening here under the Liberal-National government. It is engaging community groups by providing them with the materials to clean the graffiti and organise clean-up events. It is important that the incidence of graffiti comes down quickly. During my first election campaign, one of my signs had graffiti painted on it. I think that someone wanted to portray me as a Nazi. I am nowhere near as right wing as that. I had to contact the Town of Victoria Park. The graffiti was cleaned up within 24 hours. It is important that we have the facility to deal with graffiti when it happens.

Another point I want to raise with the Attorney General is to do with the actual offence. This legislation is obviously primarily aimed at cutting graffiti off at the pass, as it were. The late Trevor Sprigg, who was formerly the member for Murdoch, was very keen when we were in opposition to have legislation brought in to ban the sale of graffiti implements. We discussed it quite a lot. He was sure that if we could ban the sale of implements, it would reduce access by potential young offenders. I might ask the Attorney General about this during consideration in detail or the Attorney General might be able to give the house some idea of how many graffiti offenders there are. We read very little about people caught in the act of causing graffiti. We know very little about the sorts of penalties that have been imposed on them and the number of graffiti offenders that have been sent to prison. Some offenders would be very young people, who would obviously get community orders. However, it would be useful if the Attorney General, in his summing up, could outline a little about the offenders. The community is asking what happens to those people when they are caught. The penalties for committing graffiti come under section 445 of the Criminal Code, which this legislation seeks to amend by increasing the penalty from 12 months and a fine of \$12 000 to two years and a fine of \$24 000. I believe that graffiti at present comes under the category of criminal damage.

The offence of criminal damage can cover all sorts of acts, and graffiti comes within that category. I am not sure whether that is the right way in which we should be applying the legislation. Graffiti is dissimilar from ordinary criminal damage, such as smashing windows or damaging someone's property. We should be making the offence of causing graffiti more specific. I will be advised by the Attorney General of the best way in which we can do that or whether he believes it should be the case. It appears to me that the offence of causing graffiti is different from other offences and that some people do not regard it as a really serious crime. The community is fed up with having to clean up after people who cause graffiti. It is worse when it is someone's private residence. Graffiti on bridges, walls alongside railway lines and lampposts is bad enough, but when graffiti is on a retaining wall or front wall of a private house, I believe that is an invasion of someone's privacy and damage to private property that society will not condone. We must carry out a balancing act between dealing with offenders and changing the attitude of young people and getting to young people before they go down that path. We must tell young people about the senselessness of getting onto a bus and causing graffiti. When I was a member of the opposition, I had a representative come to me from Southern Coast Transit, who told me about the senseless damage to buses in the south metropolitan corridor. The same applies to the new train service to Mandurah. It seems it was only a matter of days before the windows of the carriages had been scratched. I have been told that offenders use broken pieces of DVDs and such things. It will always be difficult to stamp this out, and perhaps we never will, but we need to have some sort of mechanism for getting through to young people and instilling in them how senseless it is. When I was at school, graffiti was not a big issue. Kids used to scratch their name on toilet doors and such places. In those days there were a lot of public phone boxes because a lot of houses did not have private telephones. We were always told that the one no-no was damaging a public phone, because someone might have to deal with an emergency. I had the question always stuck in my mind: what would happen if someone had to ring for a doctor or an ambulance and some kid had pulled the phone off its cord and broken it? I think those messages can get through to young people, but we just need to find the right way to convey them.

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

I support the legislation because it is a step in the right direction. The local government of the City of South Perth has come up with a few ideas to progress things. They particularly liked the idea I raised with them of something similar to the higher education contribution scheme. They think that if offenders were made eventually to pay back the money that had been expended to repair the damage they had caused, it would be a good way both to give them a reminder later on in life and for the local government to recover costs. The City of South Perth agrees with increasing the penalties for those who sell materials to under-age persons. It agrees with requiring offenders to clean up graffiti and having to perform community service. It said that offenders should also be required to attend compulsory behavioural change clinics or the like. I do not know whether the Attorney General would like to run those clinics, but I should imagine that would be a fair job.

The City of South Perth has also taken a tough line in suggesting offenders' possessions—a computer, a guitar or whatever—to the value of the clean-up costs should be taken and auctioned as punishment, much like the situation that pertains with hoon's vehicles. That is a fairly tough line, but it is what the City of South Perth suggests. Another measure it suggested was that offenders should be required to graffiti their own property to the same extent as the property they had damaged. I think that might be taking it a bit too far, but the Attorney General can see that there is concern and frustration about graffiti, especially for people who have to clean it up. I think graffiti is a behavioural thing, a community attitude thing and, for young people, a learning thing. It is a fad with a lot of young people right now. When the Criminal Code Amendment (Graffiti) Bill 2009 was last debated, the point was made that probably a very small percentage of young people get involved in graffiti, but because they can travel so far and so quickly now, it does not take a large number of offenders to tag a fair bit of the metropolitan area, and I think that is what is happening.

I do not want to brand all young people as graffiti artists, but graffiti is a big challenge for society. This is good legislation, and the late Trevor Sprigg, former MLA, would be very happy, if he were looking down, to see that the Attorney General is finally getting it through for him, as the Attorney General is now the member for Bateman and has taken over the big shoes of the former East Fremantle full-back. We will probably refer to this in our party room as the Trevor Sprigg bill.

MR C.J. TALLENTIRE (Gosnells) [5.43 pm]: I rise to outline my support for the Criminal Code Amendment (Graffiti) Bill 2009; however, I have concerns about the degree to which we can expect it to be effective.

People in my electorate are upset by graffiti; there is no doubt about it. People find it confronting and are saddened, annoyed and angered by the mindless tagging that goes on around the electorate of Gosnells, which brings me to the issue of what graffiti actually is. I have heard other members talk about it being clear that people who engage in this sort of tagging are not pursuing any artistic endeavour. I think, more than anything, they are perhaps expressing some sort of anger that they have within themselves, which they are doing by tagging public and private property as some sort of territorial marking. In their minds, that territorial marking is a way of asserting their sense of place in our community. I think that those who tag are demonstrating their lack of connectedness with their community. That is the real root cause of this problem and it is a problem we need to solve if we want to fix the problem of graffiti in our community.

I do not agree with the member for South Perth's statement that we will always have this problem. I am much more optimistic about it. I believe that if we make changes to our society in general, with a specific emphasis on what young people can and cannot do and the sorts of activities that are available for young people, there is every chance we can move away from this present phase of fairly intensive graffiti that goes on in our community.

I accept the point that graffiti has been around for a long time. I suppose my first recollection of seeing the more artistic end of the spectrum of graffiti was during the credits for the 1970s television program *Welcome Back, Kotter*, which showed subway trains in New York with extensive painting on them. That was perhaps before the phase of tagging for the sake of territorial marking had come about. In my electorate I have heard about gangs of people who come into the area and more or less go on a rampage to tag every street sign and bit of public property, as well as the public transport they used to come into the area. A mob mentality can sometimes drive the problem further. Clearly, these people have no real respect for our community, although they understand the term "respect". I notice that the term "respect" is used by many young people in the electorate when speaking of someone they have some degree of admiration for. We need to ensure that they have respect for the general community and are connected to it.

I hope I have not painted too bleak a picture of the tagging and graffiti situation in the Gosnells electorate, because a lot of really positive work has been done to combat it. The City of Gosnells formulated some initiatives that may have inspired some of the provisions in this legislation. The City of Gosnells has undertaken a business accord to encourage businesses to commit to restricting access to items that can be used illegally and can contribute to the amount of graffiti in the City of Gosnells. A number of businesses have signed on to an

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

agreement that they will not sell thick markers, spray cans, heavy engravers and other graffiti implements to people they suspect could be intending to use them to damage public or private property.

It is really worth noting some of the businesses that have signed up to the business accord in the Gosnells electorate. They include Thrifty-Link Hardware in Gosnells; Mitre 10 Handy in Thornlie; Crazy Clark's in Gosnells; Huntingdale News in Huntingdale; Bennetts Hardware in Gosnells; West Gosnells Newspaper Newsagency in Gosnells; Foothills News in Gosnells; the Eziway Food Store; Supa IGA in Gosnells; IGA Fresh in Thornlie; Supa IGA in Forest Lakes; Discount Madness in Forest Lakes; and Forest Lakes Newsagency. I draw members' attention to the fact that some of the larger retail outlets, such as Woolworths and Coles, that are claiming they are very much a part of our community are not on the list. I could be wrong about this and perhaps the list needs to be updated, but I am not aware that either Coles or Woolworths is participating in this business accord at the local community level in the Gosnells electorate. That is interesting, considering other bills that are presently before the Parliament, especially those regarding retail trading hours. We have heard much about how some businesses believe they should be entitled to trade for longer hours because of their engagement in our community. The fact is that some businesses struggle to see how a program like the business accord can actually work, and that perhaps explains their absence from the list. Perhaps if this program is rolled out on a statewide basis, we will find that some of the bigger retailers will participate and will take full advantage of the opportunity to be loyal and dedicated community members and to ensure that we all work together to solve this problem.

I cannot understand the lack of respect that some people have for public property. I cannot understand what goes on in the minds of people who get onto trains and buses and think that as soon as they have found their seat they can cause damage to that public property. That suggests that there is some failing in our system. It suggests that these people do not feel a part of our society. It suggests that they do not realise that public property belongs to them just as it belongs to every one of us, and that we should all work together to ensure that that public property is maintained in as good a condition as possible for the enjoyment of all.

It is sometimes said that we can learn some lessons from other countries in the world that do not have the same prevalence of graffiti as is the case in Australia. However, that is sometimes difficult, because there may be other circumstances that cause those countries to not have the same prevalence of graffiti. I therefore prefer to use Western Australian and Australian examples. I point in particular to one of the academic institutions that I went to, the former Muresk Institute for Agriculture near Northam. It is remarkable that at that institute there is almost no graffiti. That suggests that the majority of the people at Muresk have a respect for the institution that they are studying at. That is probably the case at other universities as well. That demonstrates the point I made earlier. We need to ensure that people have a strong connectivity with their community, and with the institutions and the public infrastructure that they are using, because that can provide a strong and powerful incentive for them not to deface that property.

It is worth noting some of the measures that are being taken to reduce the amount of graffiti in our community. Some of these measures have come out of the recommendations from the City of Gosnells. The key measure is that graffiti should be removed as soon as it appears. That is something that the City of Gosnells has put resources towards. People who spot graffiti are asked to take action immediately by reporting that graffiti to the police or the City of Gosnells so that it can be photographed and then quickly removed by a team of workers. There is no doubt that the quick removal of graffiti eliminates the satisfaction that graffitiists and taggers might gain the next time they pass by their graffiti or piece of territorial marking. I want to come back to the term "territorial marking", because I think there is something very basic about the minds of people who do this type of marking. It suggests that they have not evolved very much in their thinking. Perhaps that is something that we need to understand a bit better.

I have heard other members talk about the artistic merits of some forms of graffiti. I think they are referring to a different sort of activity that might have some expression of wit, or humour, that might have some sort of aesthetic appeal, or that might help us to visualise things a different way. Those types of graffiti might have some genuine artistic merit. However, it is really hard for many of the people in my electorate to see the tagging that takes place as something that is in any way artistic. It is just something that causes upset and disappointment to many people. It makes them feel that their own neighbourhood, and sometimes their own private property, is no longer their own. There is something extremely confronting about graffiti. People feel aggrieved by graffiti when they see it.

One program that the City of Gosnells has used to address the problem of graffiti is the Adopt a Bus Shelter program. There is no doubt that bus shelters are very vulnerable to tagging. They are also vulnerable to more severe forms of attack, such as throwing rocks or using catapults to launch ball bearings and the like to cause the glass to shatter. This gets back to the anger, disenfranchisement and lack of connectivity that is felt by some people in our community. The Adopt a Bus Shelter program allows people in the community to feel that they are

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

part of the solution in reducing the visual effects of graffiti vandalism. There has been a marked decrease in the amount of graffiti in the Gosnells electorate as a result of this program. The City of Gosnells is also taking a particularly tough line on any form of graffiti that contains a racist message. When such graffiti is done, the police are called in immediately, and photographic evidence is taken and resources are put into identifying the perpetrator of that graffiti.

I have mentioned just two of the many useful measures that could be used and that would help to improve this legislation. I would like to be assured that local governments have been consulted in the drafting of this legislation. I would like to be assured that the wisdom and on-the-ground experience that have been built up by local governments have been put to good use in the development of this legislation. It is not enough to simply toughen the penalties. I do not think a significant increase in the penalties will have much effect when we are dealing with this sort of mindless activity.

The graffiti teams that are working in the Gosnells electorate are equipped with all the necessary materials to remove graffiti. However, there is no doubt that their task is made much easier when the owners of property take precautionary measures. One precautionary measure that is being taken on public property is to coat the walls with a material that will prevent the spray paint from sticking to the surface and thereby make it easier to remove. People in the Gosnells electorate are also being encouraged to plant bougainvillea against their walls to make access more difficult. The spiky thorns on a bougainvillea make it difficult for taggers to climb the wall and write graffiti above where the plant has grown. These are just some of the ways in which we can improve the amenity of our suburbs by preventing public property from being vulnerable to graffiti attack. Other good initiatives are the use of lighting, and—perhaps best of all—ensuring that there is a good flow-through of people so that areas do not become quiet backwaters in which people can commit graffiti unseen.

The SPEAKER: Order! While I would like to hear more about bougainvillea in particular, I draw members' attention to the time. I will vacate the chair until the ringing of the bells at seven o'clock.

Sitting suspended from 6.00 to 7.00 pm

MR J.C. KOBELKE (Balcatta) [7.00 pm]: I wish to speak in support of the Criminal Code Amendment (Graffiti) Bill 2009 and the government's attempts to have more success in dealing with graffiti. I think all members are aware of what a great blight graffiti is in our suburbs. Members of Parliament who obviously work with so many community groups and all of us who are trying to better our local communities recognise that we really need to work with existing organisations, whether it be Lions, Rotary, sporting groups, church groups or parents and citizens associations. So many groups really create a feeling of belonging whereby people get to know each other and look after each other, and graffiti really is a negative against all those good things happening in our communities. When people look around and see how the fences, buildings and sometimes cars or buses have been defaced with graffiti, they actually feel that people are attacking the pride that they have in their community and the things that they are trying to build. Therefore, it is very destructive of that sense of having a really positive, liveable community.

Although only a very small number of people may be involved in graffiti, and I will try to talk later about some of the things that perhaps motivate these people, the impact can be quite severe. As we are well aware, one of the key strategies in combating graffiti is to try to clean it up within 24 hours, because that removes the incentive for people who get some sort of thrill or a kick from feeling that people are taking notice of them by seeing their tag or graffiti. As I said, I will come back to talk about some of the things that motivate people. We certainly need to tackle graffiti. For some time governments have tackled it with some success, but we seem to have success and then suddenly it is out of control and it becomes a problem again. It moves from suburb to suburb and many people are involved, not only the police in making arrests and laying charges, but also local governments that get very much involved in the role they play in trying to clean up graffiti and prevent it. When I was the Minister for Police and Emergency Services; and Community Safety, the state signed partnership agreements with local government. The City of Stirling, which is the largest council in Western Australia, wanted to make its whole focus on graffiti through that partnership. It was going to do that in an alliance with the City of Bayswater and I think the City of Wanneroo. Wanneroo and Joondalup were both involved, but I think Wanneroo finally wanted to be involved in that. Again, I think that indicates something of the importance that local government places on trying to tackle and remove graffiti.

What further can the government do? This legislation is the government's attempt to try to do more. The bill, just to comment on the details briefly, creates a new criminal offence penalty for a person who sells a graffiti implement to a child. We already have in place an arrangement with major retailers whereby they lock away the spray cans and other things that can be used and they do not sell them to children, but clearly people are getting around that. I have heard in other members' contributions of incidents in which they are aware that that has happened. Even with the new penalties proposed in the bill, one cannot be convinced that it will actually create a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

big difference. Quite often, what happens with these things, in my view, is that the government announces it and gets the coverage, and that actually has a bit of an impact because it gets the message out there, but after a while people get around the rules and lose sight of the problems. Then it simply re-emerges. However, to the extent that the government is talking about tougher penalties, it helps, at least in the short term, to create that view in the community of the total unacceptability of graffiti. The preventative measures that the government is putting in place in part in this bill, I think, send a very clear message, and that message is very, very important. Whether the actual initiative will be effective or how effective it will be, time will tell. However, I certainly think it is worth trying if it is part of a bigger range of initiatives. I will come back to that idea in a little while.

In this bill the government is also doubling the existing penalty in section 445 of the Criminal Code to a maximum of two years' imprisonment and a \$24 000 fine. My understanding was that at least a year or so ago, the penalty in section 445 was potentially already the toughest in Australia, and now we are doubling it. Section 445 does not deal with a specific graffiti offence; it deals with the offence of damaging property. Section 445 states —

A person who unlawfully destroys or damages the property of another person without that other person's consent is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.

Therefore, it is really the offence of damaging property. The next offence in section 446 relates to the cost of cleaning graffiti, so there is actually a direct reference to graffiti in the Criminal Code. By increasing the penalty for a graffiti offence, the government is actually dealing with the damaging-of-property offence. As I indicated, the last time I was advised on the matter, that was the toughest in Australia. There can be a bit of confusion because in other states the offence relates directly to something that has graffiti on it; therefore, they say that ours is not really designated as a graffiti offence because it is offensive damage to property. However, I think we all accept that it is to be applied to people who create graffiti, even though it is not specifically designated as a graffiti offence. I do not think we have any qualms about that; it is very effective and the government is clearly seeking to drive home that point by increasing the period of imprisonment and the fine penalties. The government is certainly trying to get the message out, which is important, because people need to understand that it is totally unacceptable to the community, and talking tough is part of doing that. However, the government needs to do a lot more than simply talk tough. I was very interested in the member for South Perth's contribution a bit earlier. I do not want to misrepresent him, but I think he was also cautioning a bit about simply talking tough and was saying that we have to do a lot more than that. The government actually has to do something to tackle the causes of graffiti, and it has to be cognisant that tougher penalties can backfire, because if we make it impossible for people to get hold of the spray cans and the textas—which are clearly picked up in the definition in the bill because I think it is a writing implement with a width of more than six millimetres, if I remember correctly—they will use other implements. We are already very much aware that when there was a restriction on the availability of those graffiti implements, we suddenly saw people moving on to scratching glass. I am sure that other members in this place are as disgusted as I am when I see our lovely new trains and buses with the glass all scratched—it really defaces the whole train or bus. Again, that is graffiti and it is something that we need to tackle. I know the government is keen to do that, but I mention that as an example of what happened when we restricted what were seen as the normal graffiti implements; people simply went off and did their graffiti with other means.

Mr M.J. Cowper: What is more of a worry of mine, member, is the mindset of those people who engage in the activity of scratching glass. It worries me that it is a bit of a barometer of where we are at as a society that young people, and people generally—but mostly young people—can bring themselves to do such acts.

Mr J.C. KOBELKE: I agree with the member and I will turn later to my view on some of the motivators. It is not just that graffiti artists are scratching the glass. I find another thing absolutely disgusting. I walk around my local neighbourhood for the best part of an hour most mornings, walking my dog. From time to time I see that people have pushed over some road signs—I assume with a four-wheel-drive vehicle, or perhaps they were coming home from a party and worked the sign backwards and forwards to snap it in half. That is just wanton vandalism, which again taxpayers will potentially have to pay for through their local council rates or through Main Roads Western Australia. Nothing is derived from it other than whatever it does for the small egos of those people who feel they have to do that. I think that is another example of what the member was alluding to in his interjection.

Mr M.J. Cowper: Also cutting up on people's lawns, or golf courses. It is crazy.

Mr J.C. KOBELKE: That is taking it a bit wide. I am talking about where it is a direct act to deface something for some thrill, which does not involve the use of a vehicle. That is another aspect, but it is equally unacceptable. That is broadening it too far. I want to talk about graffiti and those people whose wanton vandalism is about defacing parts of public or private property, and whatever thrill they get out of that.

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

We cannot deal with this issue just by imposing tougher and tougher penalties. As I said, I accept the government's attempt, through this bill, to try to do something that might work. I support it. The government has to try to tackle the issue. This is the way that it thinks it can deal with it at the current time. I believe there is always an advantage in talking tough. The trouble is that it may not last very long, even if it does work. The issue is: what motivates these people? For some people, it may be that they find a sense of belonging in some form of group or gang. Part of the identification and membership of that group may involve defacing things. We need to make sure that we are working with these disaffected people—normally youth and, I think, normally males—in how we can try to find a way of getting them back into the community. Places such as police and citizens youth centres and other organisations have been doing a very good job in selected areas. In some areas it is really working. They are getting hold of those people and showing them some hope that they can build a future for themselves. Many PCYCs have been involved in getting children into pre-apprenticeships. Often these kids do not have a sense of belonging. They have not had the parental upbringing to give them an understanding of their worth and their place in our society; therefore, they tend to find it by some other means. But if they can find a relationship with an organisation—PCYC is one example—they can be shown that they can have a bright future, they can get a job and they can get the benefits of having that job and being a productive member of our society. That is not easy. For every success there will be instances in which the services that are put in place are not able to reach those people and not able to help them. The more people we can actually provide that opportunity to, then the less problem we are going to have with things such as graffiti. That is one group of people—that is, those who are seen to be disaffected and do not have a sense of belonging. For them, establishing an identity means going along with the group they are in. It means acting against what is seen to be the broad community interest, so that they can stamp themselves apart from it and leave their mark on it as a rather ridiculous way of asserting who they are and their independence.

There are also other groups of people, who are sometimes older. It is a bit like the hoon driving that the member mentioned by interjection. People are motivated by the risk of doing it and not getting caught. We have all seen footage that has been shown over and over again of trains being graffitied while people are riding on them. I was informed a few years ago that someone went interstate just to paint graffiti for the thrill of it. That person was obviously well off and could afford the airfares. He came to Western Australia for a couple of days, did the graffiti and went back again. A small group of people who are ardent graffitiists enjoy the thrill of taking on the state and taking the risk to see if they can succeed.

We see some of the high spots that people climb to in order to do this. I will not make a suggestion about what proportion make up these groups, but we need to understand some of these people's motivations if we are to fashion solutions that are going to stop them doing it, either by changing their desire or by making sure we can target them in such a way that they will not be able to get away with it. One of the things we did when I was the Minister for Community Safety was trial mobile cameras. Clearly, we cannot put cameras everywhere. We can create fear that people will be caught by mobile cameras by leaving them in known hot spots for a few weeks. In that way we may get information that leads to convictions. We had a couple of successful stories when we first used them, but I have not had a report since.

As I have indicated in another respect, sometimes these things work briefly and then, for various reasons, they are not kept up; or the people we are trying to use them against find a counter-mechanism and are able to avoid the techniques put in place; or people become aware of them. Members know that sometimes with these closed-circuit televisions, people will go and do absolutely absurd things even though they know the camera is there. It just does not register with some of these people that they are going to be caught on the videotape or the recording that is there. I am following on from the suggestion made by the member for South Perth, if I understood him correctly, that we need to take a broader picture. It is no good just thinking that we are going to be able to solve these matters by putting in place tougher and tougher penalties.

The example I would like to turn to relates to a recent trip to the United States. I was in Philadelphia for the National Conference of State Legislatures. It was a very worthwhile conference, but I am not going to talk about that now. I went on a tour with an organisation whose name I cannot remember, but it runs a program to paint murals in Philadelphia. I found Philadelphia a fascinating city. It is very modern and vibrant. It has a lot of street art and a lot of street cafes. The inner-city area is a very nice place. However, Philadelphia is not all a vibrant and modern city with a great sense of history and tradition, with the American Revolution, the Liberty Bell and all those things; it has its run-down suburbs and it has its neighbourhoods that have a lot of deserted, tumbledown houses, and graffiti. But in the limited areas that I visited, I saw very little graffiti. I do not know whether it was by the city council or the state government, but money has been put into a program to paint murals. Some of these murals are three or four storeys high on the sides of buildings. The program, which was explained to us by one of the ladies who is involved in running it, is very much about involvement with the local community. These people do not go in and take over someone's wall. They usually get a request from a

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

community to put a mural on its wall. It might be a business that makes the request, and the mural might relate to the business in some way. However, most murals reflected life in the community. When we went through the Cuban or Hispanic section, they had some of their Cuban or Hispanic heroes on the walls. One big portrait of a Negro American was about three storeys high. He was very well liked in that local neighbourhood because he took on the drug dealers. He started a counter-drug program in that area. Because of his success with that, the community wanted this big painting of a local hero in helping the fight against the drug trade in that area.

[Member's time extended.]

Mr J.C. KOBELKE: My understanding of the murals is that it is very much about consulting with the people from the local street, the local community and the local neighbourhood, and getting what they want in the murals. Most of the murals were done by professionals. It is fairly costly to do it. I was told that there was a budget of \$7 million, but I do not know whether that was a rolling fund or whether that is what is spent in one year. I suspect it was not spent in one year, but it was said that each mural cost about \$40 000 to \$50 000. In Philadelphia there are 3 000 murals. I am told that the waitlist is about 3 000 for individuals or communities wanting to have a mural of that type in their street. Because of the consultation with the people from the local community, there is a sense of ownership. It is their mural; it reflects their community. It is something they want; therefore, they are very protective of it. With the 30 or 40 murals that I saw when touring around with the group that does them, I saw practically no graffiti. Because the murals are done in a professional way, they are very engaging. They are wonderful pieces of artwork. They enliven the whole city and they enliven the suburbs. But those people have a sense of ownership, which comes back to where I started—that we, as members, are trying to build our communities to work with the groups in our communities that are the community builders. Philadelphia is an example in which they have found a way to do that.

Mr M.J. Cowper: It is interesting to note that in Japan, with the exception of a small piece of graffiti that I saw in Tokyo, firstly, I did not see graffiti anywhere. The mindset or the culture of that community is interesting when compared with what the member is referring to in Philadelphia. The ownership aspect is a very interesting area.

Mr J.C. KOBELKE: I thank the member for the interjection. I am not familiar with the Japanese culture, but he is correct in asserting that there are a lot of cultural differences. We perhaps have some of the same cultural problems as the United States and Britain, rather than Japan. I refer to that strong sense of community, which I am most concerned that graffiti is an attack on, and which is very important in how we view our community and apprise ourselves and our neighbours of what we do to look after each other. It is very important that we tackle graffiti because it symbolises the undermining of our community. In his interjection, I think the member was saying that, from the start, we have different strengths in different communities. However, we have to work with the community we have in Perth and throughout Western Australia. We have to see how we can deal with what is a totally unacceptable problem while at the same time offering opportunities for people to become more integrated into our communities and to strengthen and build those communities. I am no expert on the United States, having been there only once, but I was certainly very impressed that the authorities in Philadelphia seem to be able to do that. We were advised not to go at night into cities that were not far from Philadelphia. We were told that there were major problems in those areas. However, from talking to taxidriviers and other people, it appears that it was a problem in Philadelphia some years ago, but the city seems to have since built a new image. That image may or may not match the reality, but if what we heard from the people in the street and saw in the murals and general upkeep of the community, the city gives a very positive impression, which is not necessarily the case in some other cities. But, of course, visitors who are there for a short time can often get a very false impression because they see only a limited part of the city.

I appreciate that the Attorney is sitting here throughout the debate on the bill. I will make a few comments and ask a question to which, by way of brief interjection, he might be able to provide an answer about progress with the Graffiti Taskforce. That task force was established by the Court government, and it was a good thing at the time. Graffiti was as big a problem then as it is now—it was probably worse in my area. It drifts from area to area, so it is hard to make an overall assessment of how bad it is at any time. In the mid-1990s, throughout my areas of Mirrabooka, Balcatta and Nollamara, graffiti was a huge problem. Premier Court launched the Graffiti Taskforce, I think in my electorate. That task force involved a group of people taking a vehicle with a trailer and equipment and cleaning up the graffiti. It was the start of the push to clean up graffiti as early as possible. Although that was already being done, that task force had government initiative behind it and it tried to build partnerships across a whole lot of local groups, who cleaned it off themselves. I thought that Graffiti Taskforce of government employees trying to get very wide coverage of that clean-up operation was a good thing. When the Graffiti Taskforce was set up it comprised 50 to 100 redeployees, or state government employees who had nothing to do. People were sitting in offices and workshops week after week doing nothing while being paid by the government. Those people were asked to volunteer for the task force. They did the minimum training and got

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

out there as part of the clean-up effort. Eventually, that started to wane because the redeployees were no longer available. They had been available because the Court government had privatised the bus service and closed the Midland workshops. Given that a whole lot of those government employees did not take exit packages and did not go to the new employers, they were left with nothing to do. By the time the Labor Party came into government, I think the list was below 50. In 2001, because our approach in government was very different, there were no redeployees sitting around with nothing to do. It was an undertaking of the member for Cottesloe in opposition to re-establish the Graffiti Taskforce. I have seen press releases, but I have not heard how it is progressing. I know there have been reviews and the Attorney General has been talking to people about what the government might do. All that has a place, but the question is—the Attorney can answer now: how advanced are we with establishing the Graffiti Taskforce, or has the role of the task force changed from what was proposed prior to the election?

Mr C.C. Porter: I will certainly address that in my second reading reply. I was sitting next to one of the members of the Graffiti Taskforce. It is reactivated; grants are flowing to it. I believe recently \$600 000 in grants were announced to help local governments and community organisations across the state prevent, target and clean graffiti. They are also doing things that have not been done before, as I understand it. One of them is a Goodbye Graffiti education program aimed at about the year 10 level. It has been rolled out in several schools. The data is being collected on an ongoing basis, but, anecdotally, it is having an impact in those areas. I can go into that in more detail. Yes, it is up and running and doing things similar to what it did before as well as some new things.

Mr J.C. KOBELKE: Is it employing people to do the clean-up or is it providing grants?

Mr R.F. Johnson: It is being funded and run by the Office of Crime Protection, which is obviously where we would expect it to be run from. The OCP is using various tactics in dealing with graffiti.

Mr J.C. KOBELKE: I thank both ministers for their interjections. From what they have said, it sounds as though that task force is doing the same as the Labor government task force did. It might be doing it better and might be varying it a little bit, but, basically, it is doing the same as ours did. Our task force was made up of local governments, but it was about giving advice on the program and then how to get people involved in it. The task force set up under the Court government was a working unit whose primary role was to go out and clean up graffiti. The model the minister has just explained to me is a modification of our model, which involved a pool of money for funding for a range of groups, whether they were local government or community-based groups, to provide education, which we were talking about. This government is taking that further in schools, and that is great. All those sorts of things were on our agenda. The same people are advising the government as were advising our government. This government might have put more money in than we did—I have not seen how much money is available. It seems to me that the government is not coming through with what it said it would do prior to the election—namely, that it would establish a task force based on the Court government model. I would be very keen to receive at some other time a fuller briefing on what the government is doing and how it is doing it. As I have already indicated, these things change. Something that works at one stage will not continue to work; therefore, I will support the drive members opposite give it in seeking to make things work better and to find new initiatives. It sounds as though this government's task force is basically the same as ours, but perhaps getting better results, which is great.

Mr R.F. Johnson: We are certainly trying to do that, obviously. I would be more than happy to arrange a briefing through OCP at some stage. Tonight we are not debating the Graffiti Taskforce itself, but the penalties for those people who carry out graffiti and sell graffiti implements. That is the basis of the Attorney General's bill.

Mr J.C. KOBELKE: I understand that and I was talking about that before the minister came back into the chamber. The point I was making is that I support the initiatives in the bill. They are this government's attempt to tackle graffiti. Without repeating everything I said, often these measures have an impact when they are first introduced, but they will not solve the problem. A much broader approach is needed. That led me to talk about the task force and other things that can be done to tackle the real causes of graffiti. I am not moving away from what is clearly the substance of the bill and therefore the content of what this debate should be about today. In adding my support for the bill, I am urging the government to make sure it does not think that talking tough and providing tougher penalties will be a panacea—they definitely will not be—but, hopefully, the bill will help. If it helps, it may be only in the short term and then there will be reactions to it and problems, potentially, will arise from it.

What will the government do with young people who buy a six-millimetre wide pen to use as a graffiti implement? I understand that if it is water soluble, it will not be a problem, but if they use a permanent marker, they will be caught by the act. The laws brought in under the last Labor government provided a very wide

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

definition of a graffiti implement. If a person had such an item on him, issues of intent were at play. A school child coming home from school could have such a marker pen in his bag, or even a spray can, and say that he is doing a project at school and is using it for that. If the police checked up and found that what the child said was correct, it would not be an offence. However, if the child did not have a justifiable reason for having it, he was potentially subject to a charge. That is something that we brought in quite some years ago. There are a range of ways in which we can tackle this issue. At times what we do will work, and then circumstances will change as people change their mode of behaviour, so we must keep addressing the issue. I am certainly hopeful that the government will put its energy into tackling graffiti and that it will do a range of things. I hope it will continue to monitor, energise and drive the responses, because these things go a bit stale after a while. To the extent that this legislation creates an impetus in the community to get the message out that graffiti is totally unacceptable, and hopefully provides some form of deterrent, whatever that might be, I think it is a good thing. However, the government should not think that this is a panacea. Much more fundamental issues must be dealt with if we are to make major inroads into the scourge that is graffiti in our suburbs.

MR A.P. JACOB (Ocean Reef) [7.30 pm]: The member for Gosnells has just left the chamber. I was going to start by addressing one of his comments, when he said that he believed that this was mainly a recent problem. He was disagreeing with the member for South Perth, who said that it was a longstanding problem. I will begin by saying that I agree absolutely with the member for South Perth. In fact, this problem may well be more longstanding than he realises. I recently went to see an exhibition from Pompeii, with items that were about 2 000 years old. One item at the exhibition was a wall from the town. Scratched all over the wall was various graffiti from 2 000 years ago. Ironically, a lot of —

Ms J.M. Freeman interjected.

Mr A.P. JACOB: Perhaps. Maybe the writings on the bench top in the press gallery could be put in a wall.

One of the interesting things about the slogans on the wall was that they were often election slogans for the bakers' guild or some such thing. To frame it in today's context, I wonder whether any member in this place would campaign in such a way that he or she would get someone to graffiti or tag their slogans. I highly doubt that, and I highly doubt a person's chances of being elected if he or she were to do that. I believe that that quite clearly illustrates the electorate's attitude towards this issue.

I find the tagging to be the most objectionable, and that is certainly the feedback that I get from my constituents. I would not wish to impose my aesthetic view on those pieces that people may consider murals, which has been talked about. I believe that the difference between graffiti and a mural is often whether the person who has done it has put any effort into doing it and places any value on it. Also, permission is very much an issue. I was faced with an interesting case early in my tenure as a Joondalup councillor. I visited a local residence in Mullaloo because I had received complaints from residents about a wall on a pedestrian access way that had been graffitied. I showed up, and the first thing I realised was that I knew the people who lived in the house, and I knew their kids. So I knew straightaway who it was. However, that artwork was done with the parents' permission. The artwork was not necessarily to my taste, but it was perhaps a good example of it being done proactively. It was a private property wall. The homeowner had said to the kids who did the mural, "If you clean up the PAW"—which was a bit of a hot spot for graffiti, broken bottles and everything else—"and if you keep it clean, you can paint your murals on my wall." That is an excellent example. Some of the residents were still not very happy, but they had no grounds to complain in that case.

The simple fact is that in the suburbs in the area that I represent, the vast majority of graffiti is nothing more than tagging with a six millimetre, or larger, black pen. It is really just tribal territorial marking. Predominantly, I see "NSC", which is the "northern suburbs crew", or "6025", which is another one that I see around a lot.

Mr P. Papalia: You just gave them some more profile.

Mr A.P. JACOB: The "6025" is one that can be seen all around Perth.

Mr C.C. Porter: They are probably not as interested in this as you are.

Mr A.P. JACOB: Yes. I would be very surprised if the taggers are people who read *Hansard* in their spare time, but one never knows. "6025" is a case in point. The people in that group come mainly from the southern end of my electorate, and the name comes from the postcode of that area. I think that includes Craigie. I see tags posted all around town. However, they did one particular tagging during the election campaign. I had a few signs up, and they wrote some less than flattering things about me on the signs. That is all part and parcel of an election campaign. However, the big problem with those tags is that they happened to be right at the front of a school that my mum happens to work at. A lot of the kids there know me personally. Those slogans were particularly

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

objectionable, and, although they did not bother me, several of the kids went home that day in tears. I found what they did to be quite offensive and quite inconsiderate.

Mr D.A. Templeman: What were your signs doing at schools in your electorate?

Mr A.P. JACOB: They were not actually at the school; they were across the road.

Mr D.A. Templeman: I hope they weren't on public property.

Mr A.P. JACOB: No, they were on private property. Do not worry, member.

Whether there is value in some of the graffiti or some of the murals is not really the issue. We are here representing our constituents, and the message that I have been getting from residents in my electorate has been very, very clear on this issue. Throughout the election campaign, in particular, I would rate graffiti as one of the top three issues that came up. Similarly, in my time with the council, it was one of the issues that was raised with me the most. Also, I recently received a 1 700-signature petition on the subject, which was circulated for only a few weeks. The member for Mindarie submitted it to this place last Tuesday, because the proponents were mainly from his electorate, although a significant number of the signatories also came from my electorate. I will read out again what that petition sought. It states —

We, the undersigned, believe that the current system of management and discipline in respect to persons who perpetrate acts of vandalism and graffiti is insufficient for the protection of public property. Commercial and private properties in the region of Mindarie are continually targeted by graffiti vandals, placing an increasing financial pressure on business owners who must not only bear the cost of repairs, but also the cost of business that is lost as a public increasingly avoid places frequented by individuals who perpetrate these offences.

Now we ask the Legislative Assembly to give greater power to police and courts to penalize persons guilty of committing acts of vandalism and graffiti. Furthermore, we ask the Legislative Assembly to consider enacting laws that will force offenders to either personally remove all graffiti, which we believe is the most appropriate penalty, or pay a fine. These should be the most effective deterrents against this kind of vandalism.

In the space of a few weeks, we had about 1 700 signatures. In fact, I would be surprised if anybody refused to sign that petition. Why would they? In researching this issue very recently, I have been looking at what tagging is costing our local councils. My local government authority, the City of Joondalup, was by far the worst hit in the past year. It spent \$988 128 on its removal in 2008, almost double what it spent in 2007. The City of Stirling, member for Scarborough, spent \$750 000 in the past 12 months to remove 15 152 pieces of graffiti. The City of Swan, member for Swan Hills, spent \$673 948 in just the past 12 months on addressing this issue.

I will draw particular attention to the City of Joondalup, which was by far the worst hit council in the metropolitan area. In fact, it was only some \$12 000 off spending \$1 million on this issue. In recent weeks, I went around my electorate looking to get a photo for my own records of some of the worst graffiti hot spots. I went out for a few hours, and I went to all the known graffiti hot spots. I have lived in the area all my life. I went straight to the squash courts at Mullaloo, and I went to the Kinross skate park, and I could not find any substantial graffiti at those sites, which pleasantly surprised me. Although I still see tagging around the area, I really believe that we are starting to win the fight on this issue.

Mr P. Abetz interjected.

Mr A.P. JACOB: More and more money and more and more effort are being put into it. We do not see an immediate result. However, after three or four years of addressing this issue—I am not by any means trying to take the credit, and I am coming to the conclusion of my comments—I want to flag that I think we are winning the fight against graffiti; we are starting to gain ground. Sometimes when a person is in the middle of it, it is very easy to lose perspective on what is happening out there. I was very surprised at the lack of graffiti in my area, although it is still an issue. At the cinemas near my office it is certainly an issue, and there are hot spots in other areas. However, very clearly, it is lessening. In commending this bill to the house, I say that I do not think that we are losing the fight by any means. In fact, I believe that we are gaining ground. While I do not think that anyone is suggesting that this bill will all of a sudden be the magic bullet that is going to solve this issue, it is another good step in the right direction. It will allow us to start to make more ground and to remove the scourge of graffiti from our local areas.

MS L.L. BAKER (Maylands) [7.40 pm]: My electorate of Maylands has the same problems with graffiti that I have heard all speakers in this debate comment on. It is a source of great consternation, particularly for the City of Bayswater. I am sure that many members are aware that the City of Bayswater has been a very vocal local

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

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Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

government authority on this matter. I believe that our mayor, along with mayors from other councils, has said that he will pursue graffiti vandals with great vigour and prosecute them where possible. I have not been able to ignore this matter in my electorate, as other members have not in theirs, particularly when driving to work and arriving at my electorate office only to find that someone has tagged my front wall. I congratulate the officers from Department of the Premier and Cabinet's parliamentary services unit for the speed with which they respond to cries of anguish when I get to my office and ask them to remove graffiti. They come out very quickly.

Ms J.M. Freeman: Do they get rid of etching?

Ms L.L. BAKER: No, I have not found a way to get rid of etching. We do get tagged. Parliamentary services comes out very quickly; it is very good at fixing —

Several members interjected.

Ms L.L. BAKER: Graffiti causes enormous cost to public agencies. The member for Ocean Reef ran through some of the figures. My council spends in excess of \$150 000 a year cleaning up graffiti. That figure is sure to increase every year. Ultimately, that gets paid for by ratepayers, as our fees go up and we get charged more to live in electorates. Tackling this problem becomes a problem for all of us.

It might be interesting to have a quick discussion about another side of graffiti. There are different types of graffiti. We have heard tagging mentioned, and that is certainly very prevalent. Political graffiti is also worth mentioning. The member for Ocean Reef commented on political graffiti. It is not something we see much of in Australia. Having worked quite extensively in Asian and Pacific Island countries, in countries such as Nepal, where I spent three years, the literacy rate is very poor. I witnessed the fact that in a population with an illiteracy rate of about 88 per cent, during elections the only way to conduct a political campaign is by using graffiti. The image of a cow for one party or a floral emblem for another party becomes extremely central to the campaigns that are run. I am certainly not advocating that we should take that up but, by way of explanation, political graffiti is something that is used —

Mr A.P. Jacob: I don't think anyone here would have the courage to campaign in that way.

Ms L.L. BAKER: Unlike here, where many of us distribute printed material liberally, in countries where people cannot read, the graffitiing of surfaces with a party image or sign that people recognise becomes a critical element in getting a message across.

I was at the Maylands Peninsula Primary School in my electorate a couple of weeks ago. It is a fantastic primary school—very modern and very schmick. It has a great principal, Steve Salamon, who is doing a wonderful job. It is a very new school. During the celebrations for National Aboriginal and Islander Day Observance Committee week, the students and teachers spent several weeks painting a huge red brick wall at the back of the school with a most beautiful design. It had gorgeous pictures of kangaroos and lots of Indigenous animals and trees. It was done with incredible precision; great love was put into every stroke. I was invited to the school's opening celebration of NAIDOC week. Many community leaders were there, along with the children who painted the mural. When we went to have photographs taken at the mural, Steve, the principal, was quite distressed because some naughty locals—they might not have been locals; they could have been out-of-towners—had graffitied this beautiful piece of work. It was so sad. Everyone was very crestfallen. Steve was confident that the Department of Education and Training would come to the party and help repair the damage. I think that has happened. I will let the house know if it has not happened. I am sure that the education department has helped to remove that graffiti. For me, that was a really clear example of the damage that a certain type of graffiti can have on a community that has put its all into creating a piece of public art. We do not need the added expense of protecting schools by wire fences, but it looks like that is the way we are going because of vandalism and graffiti attacks on our schools.

There are other reasons why people graffiti. It is not just youth who get involved in it. We have talked about tagging, political graffiti and gang-related graffiti to mark territory. There is also a real cry for help in some of the graffiti artwork that we see around the place. That can happen because there are not enough services or facilities available for kids and they are bored. When we are designing programs and strategies to deal with graffiti, it is incumbent on us to look at the range of reasons why people choose to mark public walls or public facilities. We should not just think that one strategy fits all. If we are trying to tackle antisocial behaviour, which we think is just tagging for the sake of tagging—we may find we are dealing with a community that is incredibly poor and the people in it have very few alternatives and facilities to keep the kids busy; they are very limited in their options—the strategy of increasing punishments for graffitiing will not necessarily work. We have to look at the broader impact of social deprivation and social exclusion and how that plays out in local communities. I am saying that one size does not fit all. I certainly recognise that there is a need to punish people who graffiti.

Legally, there is also a need to put some responsibility upon shopkeepers to ensure that the products used for graffiti, such as marking pens, spray cans and etching tools, are not so readily available and not sold to children. There is no doubt in my mind that there is a need to do that. We should not look at that in isolation. Other things should be taken into consideration in the argument around graffiti. I heard members talking about graffiti art being a valid form of art. It may sometimes be a valid form of art, but not when it is on my front wall. That becomes the message.

In a quick bit of research, I found a number of prevention tips and strategies. Of the 11 strategies that I was able to identify, only one refers to enforcing antigraffiti laws. I will take a couple of minutes to run through the other 10. The first is to make sure that the surroundings of areas that are prone to damage in this way are kept neat and clean. The environment should be kept clean and neat without trash, litter, broken fences or anything that is decrepit or suggests apathy or neglect. Those kinds of things will attract more attacks than a pristine area.

Mr P. Abetz: Not if you have a business in Canning Vale, unfortunately.

Ms L.L. BAKER: Except perhaps in Canning Vale. It is certainly the case in most other places in the world, but I accept the member's wise counsel on this about Canning Vale, and perhaps that of the member for Geraldton.

Another strategy is promptly removing graffiti. Everyone has mentioned that. It is undeniable that leaving tagging is just a recipe for encouraging more taggers or more graffiti. There is no doubt that removing graffiti promptly is really essential. I thank parliamentary services for removing the graffiti on my electorate office, as I said earlier. Reporting should be encouraged. The public should be educated in the strategies for reporting graffiti vandalism. Telephone hotlines or other ways of reporting graffiti, including websites, should be developed. That is a local government strategy used in many places. Local government is very creative with strategies for tackling graffiti vandalism, and should be supported by the state government in its efforts. Another strategy is to create some public art and encourage the community to be part of creating it. If many people in an area are involved in the creation of something innovative, different and spectacular, people are less likely to want to trash it. Reducing access is another strategy. It simply means making sure that access to buildings is controlled to create a natural deterrent. I take up the very astute observation of the member for Gosnells about bougainvillea at this point. It is indeed a wonderful plant and much underrated in this discussion. Bougainvilleas are probably an essential feature of any discussion about graffiti. Not only are they spectacular plants, but also they have very nasty thorns, as anyone who has ever tried to prune one will know. Anything spiky, such as cacti, should be planted in areas where we want to keep graffiti vandals away, because they are a very good deterrent. Obviously, bright lights will also be a major deterrent.

Mr P. Abetz: Shotguns work well, too.

Ms L.L. BAKER: I will ignore that intervention. I do not think that is quite as useful a strategy as we would like to hear about from the member.

Using graffiti-resistant surfaces is another important strategy. Make sure that high-risk areas are not painted white or cream; they should be painted in dark colours. I believe that textured surfaces are less prone to graffiti, although I have no idea why. Members should not quiz me on this but the research shows that it is harder to write on a textured surface. Another really important strategy is monitoring graffiti-prone areas as part of an overall umbrella strategy for tackling graffiti. Our local councils are very good at doing that. The issue of graffiti walls is very interesting and I see very mixed reports on their success at preventing graffiti vandalism. In some places they are very good at reducing the incidence of graffiti while in other places they are not so hot. They may incite people to continue indulging in behaviours we would not be all that happy about.

I believe that New South Wales passed legislation in 2008 tightening up its graffiti control act. Possession of implements was made an offence—pretty much the same as what we are doing with this bill. I believe that that state has had some initial success, although the legislation has been in operation only since February 2009. That augurs well for this bill.

In conclusion, graffiti has negative consequences in communities, very negative consequence in one's own community, and even more negative consequences if it happens to be in one's own backyard, letterbox or front door. We should never forget, however, that it can reflect the fact that there are other problems in the community that need tackling. The facilities and services available to the young, and maybe even the not so young, may be inadequate. I urge the government to implement a very well thought out and systematic graffiti reduction plan. This legislation is just one part of that. Enforcement and increasing penalties is only one part of the solution; it will not stop, fix or cure the problem. We must also look at what wider problems might factor into the equation before we are really able to tackle and remove graffiti at the community level.

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

MR P.T. MILES (Wanneroo) [7.57 pm]: I support the Criminal Code Amendment (Graffiti) Bill 2009. The existing legislation needs to be amended to further enhance the tools that local governments and the state government have at their disposal to help fight against the scourge of graffiti. Strengthening the support of legislation is always vital. A whole-of-government approach is needed because public buildings, small businesses and homes in Wanneroo have long been targets for graffiti vandals. My own office in Wanneroo has been targeted on several occasions. I told the member for Joondalup when we last spoke on this bill that I do not keep windows for long enough for them to get graffitied. They are always nice and clean; that is for sure.

Ms J.M. Freeman: Do they get broken?

Mr P.T. MILES: They often get kicked in, yes. It is vandalism. I do not think they can afford the pens in my area, so they would rather kick the windows in. The cancer cure lady next door, who runs a second-hand shop, is not as fortunate as us. Obviously, the department will come out quite regularly and change the windows and put new film on, but she often gets completely smashed windows, which we do not get because of the film. The owner of the PC Guru shop up the road is also getting his windows kicked in. The whole area is getting quite a bit of a bashing. The member might have it good at Koondoola Plaza.

Ms J.M. Freeman: They do not have glass in the windows any more.

Mr P.T. MILES: No. The shop next door to my office, which is a real estate agent, has had shutters installed, but the very first night he pulled the shutters down they just graffitied the shutters, which are hard to clean. There is no one fix, so all we can do as a government and a society is to keep trying to knock out the graffiti and the violence that goes with it. The residents often tell me that they are sick of signs, lampposts, buildings and schools being defaced, and glass being etched, with scrawls and scribble. This does not even amount to anything—at least some graffiti involves written words; in our area we do not even get that.

It has already been said by many members that graffiti is unsightly, it is demeaning to local residents and it is often very expensive to remove. During last year's state election campaign, the Liberal Party promised a whole-of-government approach to bring under control the problem of rampant graffiti vandalism. As part of that commitment, the Barnett government provided funds of \$160 000 to the City of Wanneroo for the provision of CCTV cameras to the city centre. That funding is part of the government's \$6 million community crime prevention program. A further \$40 000 was attached to the Wanneroo part of the Blue Iris CCTV register, which is designed to facilitate information sharing between the City of Wanneroo and the police; it also went towards a range of facilities at the Wanneroo council offices to enhance the ability of police to respond effectively to crime and to gather the evidence required for court cases.

This bill will also make it harder for children to purchase graffiti implements, such as cans of spray paint and certain marker pens. There will be a substantial financial penalty for persons who sell such items to children. The bill provides a further deterrent to graffiti offenders by doubling the maximum penalty to two years' imprisonment and a fine of \$24 000 under the Criminal Code. I believe that these measures, together with the whole-of-government initiatives being put in place, will result in graffiti outbreaks in our communities being cleaned up more quickly and staying clean for much longer.

MR C.C. PORTER (Bateman — Attorney General) [8.02 pm] — in reply: I thank all members for their comments. I will proceed in three stages by first of all making some very general comments about the issue of graffiti; secondly, some specific comments on matters that have been raised by individual members; and thirdly, by making some summary comments directed at this bill.

I have listened intently to all contributions and I think I can summarise some common ground. Graffiti is a problem in each of our electorates to varying degrees, but it is a very serious problem in many electorates. The debate focused firstly on the fact that the bill before us is an imperfect solution. The government concedes that; the bill was never billed or marketed as being in any way a kind of panacea to rid our streets and buildings of graffiti although, for reasons I will give in a moment, I do not think that this is a modest proposal in any sense. I think it is a very important proposal. As I listened to members' contributions during the course of the debate, it became apparent that they revolved around three types of submission. The first was to focus on the things that this bill does not do, and there are several things that it does not do. The second was to talk about coming up with other innovative solutions, and by "innovative" I mean new. In fact, I think I heard at least one member use the expression "thinking outside the box", which is a term that I cannot stand, but that is just me. I took that to mean "to find new solutions". The third thing that members talked about was whether the bill would or would not work.

Having listened intently to all of the debate, giving particular attention to new and innovative ideas, I think the notion that we have missed something in our efforts to tackle graffiti is an interesting one. Sometimes the "we need to be innovative and think outside the box" type of submission carries with it the presumption that there is

some solution to this problem, some very important thing that we have missed, and that because of a lack of searching or innovation, or as a result of not thinking clearly or directly, we have actually missed the key. I do not think that that line of thinking is at all helpful in this type of debate. Having listened intently to each and every speaker, I heard only two ideas that I have not heard before. One came from the member for Mandurah; his idea was to somehow fit a whistle to spray cans so that people using them could be detected. The other idea came from the member for South Perth, who suggested something along the lines of a HECS system under which young people caught spraying graffiti could be fined on the prospect that they would later get a job and be able to pay the money back. With due respect to my side of politics, I like the member for Mandurah's idea more than I like the member for South Perth's idea! Although the member for South Perth's idea is new and novel and I had not heard about it before, the cost of administering such an initiative would almost certainly make it cost prohibitive and outweigh any possible recompense from fines. I had not heard of the whistle idea before, however I might give the idea some thought as we go about a whole-of-government approach.

A range of speakers spoke about perennial policy problems in this area and noted that, at various times, focus should be given to those issues. One of the most recent speakers talked about the need to keep properties pristine. This goes back to sociological concepts about the "one broken window" policy and so forth—the idea that one broken window in a building is an encouragement to further vandalism. There is no doubt that those sociological policies are very important. I went with the member for Riverton to a property in his electorate that was covered in graffiti. In fact, it was demonstrative of one of the problems that has been highlighted in this debate. Although from a sociological point of view we might believe that where there is some graffiti we will get more graffiti, we are getting much better as a government and as a society at cleaning up graffiti. However, one of the problems we have is the fact that graffiti on private properties cannot be cleaned up by the council or by people on work orders. It is also relevant for properties owned by entities such as Telstra, where there is a policy reticence to do the right thing and to clean up graffiti, because those areas represent targets for further graffiti and show all the indications of social decay, which seems to be a geographical encouragement for people to further vandalise property. The private property that I visited with the member for Riverton was covered in graffiti, and there were dozens of empty spray cans on the ground nearby. These are the implements of graffiti; members have mentioned many other implements of graffiti, and I will turn to them in a moment.

The contextualisation of this problem reminds me very much of the language people employ when talking about terrorism. One of the more sensible views I have heard about terrorism is that there has to be a policy goal to return levels of terrorist violence back to what is termed "normal, historical and acceptable" levels. That is a recognition that terrorism is something that has always been with us in some way, shape or form, but that our experience, from a congruence of factors, is that of a greatly heightened risk of individuals becoming victims of terrorism, and that what we have to do is return levels of terrorist violence to normal historical patterns. Some people take the view that the "War on Terror" is a ludicrous idea; I take the view that it is ludicrous to think that such a war can ultimately be won at any given point in time. There was a famous speech by former British Prime Minister Tony Blair in which he spoke about completely ridding the world of this evil called terrorism—as if that could ever be possible. Given the historical experience the British government has had in Northern Ireland, it seems strange to me that he could think it could ever be a perfectly winnable situation.

That may sound slightly off track, but it is important to keep this problem in focus and context. The way in which we report and record graffiti in this state is imperfect. Neither the courts, the Director of Public Prosecutions nor the police are data-gathering agencies; they undertake other primary functions. In 2003-04, 10 426 graffiti incidents were reported to police. In 2007-08, there were 15 972 cases reported. Over that relatively short time, the level of reported graffiti incidents has increased by one-third. If we are finding this to be an issue in our local electorates, it is because people are suffering from that one-third increase. It has reached the level that is beyond, in my argument, normal historical or acceptable levels of graffiti. Something has happened and it has gotten to a level that most of our constituents think is out of control.

Ms J.M. Freeman: How does that compare with our population growth, though; is there a comparison?

Mr C.C. PORTER: It is a good question. Our population growth is also very hard to quantify, but it has not grown by a third since 2003. In fact, the Australian Bureau of Statistics data has our population growth down to around two or three per cent; however, it measures population growth only on the basis of people moving electorates; it is done through the Electoral Commission. Many people will move into the Western Australian jurisdiction and work in the mines but still vote in Gippsland, for instance. It is therefore inaccurate data. However, I can assure the member for Nollamara that our population has not grown by a third. What members are experiencing in terms of complaints from constituents is that extra one-third of graffiti incidents near their houses, on their businesses or on their cars. Therefore, I would argue, that is the problem we are dealing with. A one-third increase is—if not extraordinary—very substantial and having a major impact in each electorate. I will

come back to the data and statistics on graffiti in a moment, but I might move on to address some comments on specific issues that were raised by various members.

First, the member for Girrawheen raised a number of issues by way of a direct question. The member for Girrawheen talked about etching and said that this bill does nothing about etching. It does not, and that is because it is simply impossible to provide a legislative response that would prohibit the sale of implements used for etching. In fact, having now visited a variety of prisons, I have found that there is no graffiti in prisons by paint or textas, because the prisons have some ability to control the supply of those implements; and where they fail in that and there is graffiti, it is cleaned up very quickly. Therefore, interestingly enough, anyone who visits a prison will not see graffiti of that type. People will see etching. When I tour around prisons with people who have not had much experience of prisons, they cannot believe that people who are strip-searched before they enter the holding cell manage to get something in there to etch the glass of the holding cell. What superintendents and other knowledgeable people in the prison system tell me is that it can be as simple as a tiny piece of blue metal secreted behind a tooth, which is then taken out and used with the thumb to rub an etch on a surface. It is simply impossible for any jurisdiction to prohibit that. Having done some research on this now, I am not aware of any jurisdiction that has managed to prohibit the sale or transmission of articles that can be used for etching, especially when they vary from a Stanley trimmer to a broken CD to a piece of blue metal picked off the ground; it is simply not possible.

The member for Girrawheen raised the point, however, that there is another implement—what my department calls a prized implement—for graffiti that we could have sought to tackle in this bill by prohibiting the sale thereof. However, there are some difficulties with that. I am talking about tubes that can be filled with a variety of liquids, including acrylic-based paints. These tubes sometimes already contain glue or other hardware implements, not dissimilar to types of Selleys products and so forth. The problem we encountered—we did go to some level of research to try to determine whether we could prohibit the sale of these implements—was that they are almost impossible to define. They are literally tubes with a top that can be unscrewed and have stuff put in them. That is not a very helpful or acceptable legal definition. To use it would create an impost of uncertainty on business, which is almost too hard to bear. We therefore decided not to criminalise the sale of implements that we in effect could not define, because they are widely and variably available and very difficult to describe in legislation.

The member for Mandurah, I have noted, raised a new idea of putting a whistle in spray cans. I am not sure whether that is able to be done. He also had the idea of trying to understand the causes of graffiti and he said that prevention is better than a cure. I do not disagree with these sentiments. I have heard them often from a variety of members. However, they are phrased in such incredibly general terms as to be in my view almost meaningless in that we would all agree with them. In my observation, when I look at the types of graffiti around me, I can see, having gone through this process, four broad types of graffiti. There is etching; tagging; painting something that I would call close to pictures—whether members regard that as artistic is no doubt a matter for personal taste; and, finally, a new form of graffiti that is very popular in larger cities—that is, the pasting of pictures.

Ms J.M. Freeman: Stencilling.

Mr C.C. PORTER: Stencilling, it is called. They are the four different types. The sociological motivations for each of those four different types would be very different in my view. This debate suffers from the same problems that were associated with the debate on drug use; that is, the argument that we should ban drugs or the argument that we should not ban drugs, as though all drugs are the same and as though the argument is the same for all drugs. Etching for instance, I suspect is a crime of social rage. It is about misplaced envy. Someone thinks, “This or that piece of property is something I would like to partake of or own in the future but, in some view that I have, I never can, and therefore I will destroy it or make it difficult for others to own.” It seems to me that that is an offence of rage against property itself and the ownership of property.

Tagging is very much, as the member for Ocean Reef said, about the membership of and joining clubs, and thrill-seeking behaviour in many ways—a sort of crime of peer popularity. Pictures and graffiti probably have a bit of both those elements; it is simply difficult to say what the motivations are. Stencilling is again something that might be closer to that; it is certainly less damaging to property, although it probably still falls into the category of property damage because of the glues that are used.

Ms J.M. Freeman: But what you are saying is based on your view; that’s not based on any research that you have.

Mr C.C. PORTER: No; it is just my view. I am not a sociologist and I am not a psychologist; I am guessing. However, the point I am seeking to make is that to come into the chamber and say that we should look at the causes, that we should try to understand why these people are doing it and that we should try to make them do chalking instead of etching has such a level of generality that we would all agree with but is not terribly helpful

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

in moving policy forward. I am not disagreeing with those sentiments, but they seem to be very easy things to say and very difficult things to do. Both sides of the house have grappled with —

Ms J.M. Freeman: But if it was difficult to do then you would not have the Graffiti Taskforce, would you? You said yourself in your first speech that it is a whole-of-government approach. The whole point of that is that what you are saying is that this is simply part of the toolbox.

Mr C.C. PORTER: Correct. The member for Nollamara has got me; that is exactly what I am saying. I am saying that there are other things going on and other things that we should consider, but this is part of the toolbox. I am about to say why I think it is a very important part of the toolbox. Given our inability to perfectly understand motives and thereby perfectly nip this problem in the bud, there must be other —

Ms J.M. Freeman: But no-one in this place has said that this is not an important part of the toolbox.

Mr C.C. PORTER: No; I understand that. I am making a gentle criticism of the criticism, which is so very general as to be meaningless.

Ms J.M. Freeman: You could have a gentle appreciation of the different points of view.

Mr C.C. PORTER: Indeed I do. However, let me tell the house why I consider that this policy is a very important one. Although the bill will never prevent these types of implements getting into the hands of children, it will slow down the supply. That is inevitable. The economics of graffiti are much like the economics of drug supply; these items will become more expensive. There is absolutely no doubt that they will become more expensive on the streets of Perth, and that will cause problems for people who wish to use them. If I might say so, in thinking about the debate that I have witnessed over the past day and a half in this place, I recall a similar debate that went on in 1996 when I was first in law school. The debate was on a big issue in government when I was first learning about the law of causation and intent in homicide. I wondered why we were bothering with a debate on causation and intent, as it was not very exciting. However, I have a very different perspective now that I am a member of Parliament because, along with incidents of hooning, graffiti is one of the number one issues that come into each of our electorate offices; it really annoys people.

The member for Rockingham made some important points, which were to the effect that graffiti is not as serious an offence as offences such as sexual assault and offences of that type. That is absolutely accepted. However, what makes the seriousness of this offence is its egregious repetition among individual people who seem to suffer from it time and again. It makes it in their minds a very important and serious offence. It is that which puts in the mind of those individuals who suffer from it the need for higher penalties or stiffer responses. In effect, the general population seems to want to punish the last person who vandalised their property or business for all of the five or six previous vandalisms on their property or business. In some instances it may well be the same person but that will not always be the case. Therefore, the demand that we face for a stronger legislative response is certainly about the volume and repetition of the experience and effects of this type of offending.

I will turn very briefly to have a look at this issue of how many people are perhaps committing graffiti crimes. That is a very important question, I consider, in understanding the problem that as local members we are all dealing with. As I pointed out, in 2003-04 there were 10 426 reported graffiti incidents to police, rising to almost 16 000 in 2007-08. Those are just the reports and obviously the offences are perpetrated by someone. Sometimes one individual will be responsible for multiple incidents of reported graffiti. Of course, we do not catch all people who engage in graffiti, but we do catch quite a lot of people who engage in graffiti or, at the very least, property damage. Unfortunately, one of the statistical issues we have is, as one member pointed out, that our graffiti offence sits inside the larger offence of property damage, which in some states it does and in some states it does not. Whether it is appropriate to have a separate offence of graffiti is in itself an area of some issue and debate. In my view, it is not; in fact, I do not even like the word graffiti because in some very basic way it glamorises the offence, which is simply property damage but of a particular type. I refer members to section 445 of the Criminal Code, which deals with the penalty that the bill will amend, and the total number of persons who have been sentenced for that offence, of which many anecdotally relate to graffiti: in 2005 there were 821 persons convicted of that offence of property damage; in 2006 there were 2 075; in 2007 there were 2 232; in 2008 there were 2 093. In fact, in 2009 to date, 1 147 people have been convicted of property damage. Let us assume for a moment that people engage in multiple incidents of graffiti, what we can read from those statistics is that the situation is far from hopeless in terms of society's and particularly the police's ability to apprehend people who commit graffiti and property damage. Assuming multiple incidents are committed by one person, we are actually doing okay. What that says is that traditional policing methods are actually a very important part of the overall response to graffiti.

I will stop and address this issue raised by a number of members that it is not all juveniles, not all children under 18, who are committing graffiti offences. That is quite correct and this legislation is designed to only restrict the

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

supply of these types of implements to persons under 18 years. Members will appreciate that trying to ban the sale of these products to 19-year-olds, 20-year-olds, 21-year-olds or 45-year-olds will be very difficult because some of us will want to renovate our house or do other things along those lines. Interestingly, when we look at the number of juveniles who have been sentenced in each of those years there were 127 in 2005; 346 in 2006; 361 in 2007; 333 in 2008; and 259 in 2009 to date. Of the total number of people convicted and sentenced for property damage, in this year to date, almost 18 per cent of them were juveniles, which is double that proportion of the population's representation in the overall population, so they are overrepresented by double —

Ms J.M. Freeman: But that could be the simple factor that they are easier to catch or that they do it in a different way. There could be factors involved in that.

Mr C.C. PORTER: There are other alternative rational inferences but the inference I seek to draw is that there is some evidence at least—I am trying hard to present members with at least some evidence—that compared with the percentage of the overall population, juveniles are more likely to engage in this type of offending than adults. I think that is relatively clear, which is why it is important to have some kind of effort to restrict the supply of these types of implements to juveniles.

Before I get off the statistics, the other interesting thing is that increasing penalties and penalties of imprisonment must proceed from the basis that people actually go to jail for committing property damage. Interestingly, they certainly do. Let us look at the outcomes of imprisonment of the total number of people who presented at court where the head offence or the most serious offence of the cluster of offences that an individual has gone to court with is property damage. The number in 2005 was 478 people, of whom 24 went to prison. In 2006, 66 out of 1 162 people presenting at court for property damage received imprisonment; in 2007, 44 out of 1 184 received imprisonment; in 2008, 1 151 persons were convicted of crimes in which the most serious of a cluster was property damage, and 62 of them went to prison. It is a relatively low percentage, as members might expect. In 2005, immediate imprisonment was 4.6 per cent; in 2006 it was 5.9 per cent; in 2007 it was 4.8 per cent; in 2008 it was 5.9 per cent; and in 2009 it was 6.14 per cent. People do go to prison for property damage and graffiti. We would imagine that those people, without going back and looking at every single court transcript and statement of material facts, are people who had some record of offending in this area. Nevertheless, imprisonment is a final sanction and this in fact highlights another issue that I am very keen on—namely, ensuring that people pay their fines or do their community work, because we certainly do not want to send everyone who has engaged in graffiti to prison. If we do not make people pay their fines or ensure that they do their community work, the community push, which we all experience, for more and more imprisonment will simply increase. That is why those other two sentencing dispositions have to be managed very, very carefully and very, very properly.

I will talk now generally about the bill and what it does, having given some view about why it is important amongst a raft of other ways in which we go about tackling graffiti. One member spoke about the fact that each of the states has different maximum penalties for graffiti. In actual fact, when we look across each of the states and territories, there is vast divergence in the variety of penalties for crimes of this type, and graffiti specifically. At least in part that is because in some states, as is the case here, the offence of graffiti sits inside the broader offence of property damage. In the Australian Capital Territory, graffiti is dealt with under a general offence of damaging property. In the Northern Territory, it is dealt with under a general offence of criminal damage. In New South Wales, it is a specific offence of graffiti. In Queensland, it is a general offence of wilful damage. In South Australia, it is a specific offence of marking graffiti. In Victoria, it is a specific offence of marking graffiti. In Tasmania, unlawful injuries to property is the general offence. Interestingly, section 273 of the Tasmanian Criminal Code that deals with unlawful injuries in general states —

Any person who unlawfully destroys or injures any property is guilty of a crime.

Tasmania has the odd situation in which no punishment is expressly set out with respect to that offence; it has a catch-all provision in its Criminal Code that states that where there is no expressly provided punishment, the punishment for any crime shall be imprisonment for 21 years. Therefore, in Tasmania the maximum offence for graffiti is in effect 21 years.

Ms J.M. Freeman: Has anyone been sentenced to that?

Mr C.C. PORTER: I doubt that very much, but it shows the vast variety of legislative responses to graffiti. I will quickly go through them.

The Australian Capital Territory has a \$9 000 fine or imprisonment for 10 years or both—that is 10 years' imprisonment in the ACT. The Northern Territory has either imprisonment for two years or, if the property is greater than \$5 000, it is a seven-year maximum —

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

Ms J.M. Freeman: With all of these statistics that the Attorney General has looked at, has he also looked at the incidents of graffiti and compared them? The Attorney General is comparing the periods of imprisonment and has given us the facts on —

Mr C.C. PORTER: Member for Nollamara, I am a nerd but my time is not limitless!

Ms J.M. Freeman: But the Attorney General has given us so many other facts.

Mr C.C. PORTER: I understand the point that the member is making: is graffiti less of a problem in Tasmania where the maximum penalty is 21 years? I do not know and, even as the member has statistically pointed out, there might be other reasonable inferences available about what the cause is: people in Tasmania may find it more difficult to write; I do not know. However, I take the member's point. What I am trying to express for the house is that there is a variety of maximum penalties, and in fact we have traditionally sat towards the lower end of those maximum penalties. In Queensland, wilful damage attracts a penalty of five years or, if it involves obscene or indecent representations, it is seven years. In South Australia, where there is a specific graffiti offence, it is \$2 500 or imprisonment for six months, which is lower than we would suggest. In Victoria, it is a specific offence for graffiti. There is a maximum penalty I believe of "level 7 imprisonment" but I cannot tell members what that is. There is a wide variety, and we have gone, generally, towards the middle or lower ends of that. The point about increasing the penalty is that we do catch a lot of people who engage in property damage. Some of those, albeit a small percentage, go to prison for short periods. By increasing the penalty, the first thing we are doing is marking the seriousness of the offence in the eyes of the community, expressed through the Parliament, for the courts, and we are ensuring there are strong and robust responses to that. My view is that increasing the penalty to two years and a fine of \$24 000 is quite fair, and the idea of property damage itself, without circumstances of aggravation, attracting only a one-year maximum, is not an accurate reflection of the way in which each of our individual communities considers the seriousness of the offence, where it ranks in their lives, and the gravity of the criminality involved.

This takes me now to the issue of the prohibition on the sale of the actual implements. Striking a balance here is difficult. One of the issues raised by the member for Perth is this issue on which many questions were asked; namely: what about the person who wants the graffiti implement for a legitimate purpose such as to engage in art? Ancillary to that is: what about the situation I will loosely call second-hand purchasing of the implement; for instance, a situation in which a child says to an adult, "I will give you \$20 if you buy a \$15 marker pen?" There are answers to these questions; I will go through them because they relate to a range of queries raised by members. The first thing is that what this legislation does, which is different from the tobacco and alcohol product legislation, is prohibit the sale of an implement to a minor—a person under 18. The alcohol and tobacco legislation prohibits the sale or supply of alcohol and tobacco to a person under 18. That means that a person who bought alcohol for a minor and gave it to him would be breaching the relevant provisions of the legislation. The difficulty we face with an item such as this, which is otherwise innocuous except for what it does, as opposed to cigarettes and alcohol and their effects on the individual using them is that we do not want to create a situation in which a parent cannot go into a shop, buy a pen or some paint for a child who is legitimately engaged in art of some type or another and on-supply that to the child. In the circumstances raised by a number of members, under this legislation, if a 16-year-old wants a thick marker pen for a legitimate purpose, he will have to ask mum or dad to buy it for him. That is the reality of the legislation.

Mr M.J. Cowper That's not unreasonable.

Mr C.C. PORTER: That is what it intends to effect. As is noted, a person who sells a graffiti implement to a child in the first instance commits an offence and is liable for a fine of \$6 000 and for a subsequent offence is liable to a fine of \$12 000. "Sale" has a common law meaning and a variety of meanings, but, in effect, it is an exchange of commodities for money. Without having to over-draft the bill to encapsulate every conceivable circumstance, based on the advice I have been given, it would be likely that, if a child gave another person money to buy an implement and that person then gave the implement to the child and took a profit, he would fall within the definition of selling to the child. If the child says, "I'll give you \$20 to go and buy the \$15 paint can and you can keep \$5 for yourself" and the person did that, he would more likely than not fall within the definition of selling to that child, even though he was not the shop owner. But there is actually nothing in this bill that stops a person supplying it to a child if that person purchased it with his own money. If a parent purchases it with his or her own money, that parent can supply it to the child. That is different from the Tobacco Products Control Act, which states —

A person must not sell, supply or deliver a tobacco product or smoking implement to a person who has not reached 18 years of age.

Pursuant to the terms of that act, mum and dad cannot give their child a cigar or a packet of Dunhill cigarettes.

Mr M.J. Cowper: Or a bong.

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

Mr C.C. PORTER: Or a bong for that matter. We have said that, in those circumstances, the legislature has dipped into parenting, so they just cannot do it. There is no legitimate reason for a 12-year-old to be smoking a packet of cigarettes.

Ms J.M. Freeman: What about the issue the member for Perth raised about a teacher supplying an implement for a project?

Mr C.C. PORTER: This is the point. Although teachers could not pay for cigarettes themselves and supply them to the student, the school could pay for art implements and teachers could supply them to children.

Ms J.M. Freeman: As long as the teacher does not profit from them.

Mr C.C. PORTER: As long as a teacher does not profit from that exchange. That means that there is an ability for a child to get someone to buy it and supply it free of charge. It is not impossible; that could happen. That is the legislative sacrifice we need to make to allow the situation both the member for Nollamara and the member for Perth raised so that we do not stop parents, teachers or schools paying for an implement and giving it to a child. We cannot criminalise the supply of an implement to a child.

Ms J.M. Freeman: If the child used it to do property damage, you could not prosecute the parent or the teacher.

Mr C.C. PORTER: That is quite correct. If a 16-year-old says, “I desperately want this for my creative arts class” and gets his can of fiddly bits from mum, dad or the teacher and does not do the art but goes out to Riverton and spray-paints the wall, there is very little we can do about the supply of that to the child. This legislation is simply about trying to find the right balance. Teachers and parents can supply it, but it is not inconceivable that a child could pay a premium for an adult to buy it for him, so if the adult buys it and keeps some of the money for himself —

Ms J.M. Freeman: I do not see how it is caught under this act for profit.

Mr C.C. PORTER: If selling at common law is an exchange of commodities for money, it may be that the adult doing the buying is skimming a profit off the top.

Ms J.M. Freeman: I understand.

Mr C.C. PORTER: That is a matter that would have to be tested in the court and this is about not over-drafting. As I said, the Tobacco Products Control Act states —

A person must not sell, supply or deliver a tobacco product or smoking implement to a person who has not reached 18 years of age.

That same act states also —

A person must not purchase a tobacco product or smoking implement on behalf of a person who has not reached 18 years of age.

The Tobacco Products Control Act specifically states that an adult cannot purchase it for a child. We have not been able to include that in this bill because of the legitimate purposes for which a texta can be used; whereas they do not exist for tobacco products. The situation, which I will not go into, is analogous to that of tobacco.

In summary, it will certainly be the case that parents and teachers can purchase and supply implements to their children. Other adults who purchase on the basis that they keep a profit from the child as part of that purchase, could conceivably be selling it to a child. In those circumstances, that will have to be tested by the courts. The mischief this is trying to shut down is the fact—I say “fact” because there is strong anecdotal evidence—that there are commercial suppliers of these products who sell the type of can I have with me, or textas to children over the counter. There is no doubt that that ease of supply is contributing to the problem of graffiti. Another issue raised, by the member for Forrestfield I believe, was that one thing this legislation does not do is control the sale of these items over the internet. It is an interesting question. The point is that it would actually criminalise the sale by an internet supplier, wherever it is located, to a child in Western Australia. The criminal law in this jurisdiction has a territorial application. It reads —

An offence under this Code or any other law of Western Australia is committed if —

- (a) all elements necessary to constitute the offence exist; and
- (b) at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in Western Australia.

One of the elements of selling a can like this to a minor would be the minor receiving the can pursuant to the commercial exchange. That fact alone would criminalise the selling of the product into Western Australia. Without confusing the issue with the internet and buying it online, if a child rang a hardware supplier in Victoria

Extract from Hansard

[ASSEMBLY - Tuesday, 15 September 2009]

p6967b-6989a

Mr Mark McGowan; Speaker; Mr John Hyde; Mr John McGrath; Mr Chris Tallentire; Mr John Kobelke; Mr Albert Jacob; Ms Lisa Baker; Mr Paul Miles; Mr Christian Porter

and that Victorian supplier took his money and posted the product to the child, conceivably the Victorian hardware supplier would have committed an offence against Western Australian law, just as if a Victorian mails drugs into this jurisdiction, he commits an offence.

Ms J.M. Freeman: But there would be difficulty in prosecuting him.

Mr C.C. PORTER: The likelihood of us going through extradition proceedings against the Victorian hardware supplier is low.

Ms J.M. Freeman: But the likelihood of you discussing cross-jurisdictional issues —

Mr C.C. PORTER: It is not non-existent. If we had evidence that a hardware supplier was mass supplying cans of paint to children in this jurisdiction, it is not inconceivable, but I grant the member the likelihood is low, just as it is low for a range of things, the sale and supply of which are prohibited in this jurisdiction. It is very difficult to extradite people, whether a person is buying over the internet or —

Ms M.M. Quirk: So it's not correct for you to say, Attorney General, as I think you did a couple of weeks ago, that the normal investigative processes would be followed to bring to book sellers from interstate or overseas, because clearly there are impediments.

Mr C.C. PORTER: Of course. I certainly did not mean to imply by that that we will catch all the people out there because normal policing methods do that, but, at its lowest, it is not inconceivable that that would occur. I suggest that it may well be the case that some people will try, particularly through postal arrangements, whether over the internet or otherwise, to get these implements into the state. No doubt that also could be the subject of a police investigation, and it is certainly not inconceivable that that person could be subject to the criminal law. That is a problem that exists with the sale of drugs, alcohol or tobacco into this jurisdiction. It is a very difficult problem to counter.

In summary, what I would say as time draws to a close is that there is one true economic fact of life; that is, if we restrict the supply of an implement or a commodity, we will increase its price. There is no doubt about that. That is one of the reasons why, in a range of areas, I do not accept the arguments about legalisation of drugs, because when things are cheaper, the other rule of economics that we know is that people use more of them almost invariably.

What we are doing with this legislation will not solve the problem of graffiti, but I consider that it will be part of a range of policy initiatives that will try to get the level of reported graffiti back down to levels that are at least acceptable to people; or, if not acceptable, do not have the repetitious effect of ruining people's lives because their business is damaged, their shopfront is graffitied or their car window is etched. These are very difficult things to control, but it appears to me that we need to try to reassert some level of authority so that we are back down to what are acceptable, if unappreciable, levels of this type of offending.

I am hoping that in those 40 minutes I have addressed pretty much all of the individual questions that were raised by members opposite, which may obviate the need for consideration in detail. It seems to me that I have gone through my list of those queries and questions.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr C.C. Porter (Attorney General)**, and transmitted to the Council.