

CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009

Second Reading

Resumed from an earlier stage of the sitting.

HON ADELE FARINA (South West) [5.39 pm]: Members will have received in recent days emails from teenage art students who are concerned about whether they will be able to purchase the artistic implements required to pursue their lawful artistic endeavours after the enactment of this bill, especially in view of the very broad definition of “graffiti implement”. I have two emails with me. As I have said, members have already received these emails, and I seek leave to table them and have them incorporated in *Hansard*, rather than take the time of the house to read them at this time.

Hon Norman Moore: No, I am not going to give you leave to have them incorporated in *Hansard*. Members will start bringing other people’s speeches in here and have them incorporated in *Hansard*. It is a bit of an issue, not in relation to you particularly, but about members having things incorporated in *Hansard* and nobody knowing what they are and those things not being part of the debate.

Hon ADELE FARINA: I have just explained what they are.

Hon Norman Moore: I know what you are saying, but —

Hon ADELE FARINA: I do not know what the Leader of the House’s objection might be, but I am happy to leave them, and if I have time at the end of my comments, I will make sure that I read them in.

The issue that has been raised is: how will 16 or 17-year-old art students purchase an item that they need for their lawful artistic expression and development if it is classified as a graffiti implement? I am curious to hear from the parliamentary secretary whether the government, in rushing this bill into the Parliament, considered even for a moment how 16 or 17-year-old artists would be able to purchase the implements needed to pursue their lawful artistic endeavours. It clearly appears that the government has not considered this aspect and ramification of the bill. Surely the government is not expecting that all 16 or 17-year-olds will have an adult purchase those products for them. Not all 16 or 17-year-olds live with their parents. Clearly this provision would be a restriction on their ability to go about their lawful business. I will be interested therefore to hear what the government has to say about that.

The proposed amendment by Hon Giz Watson to introduce a defence seeks to address this problem and shortcoming in the bill. That defence will effectively permit minors to purchase, and retailers to sell to minors, graffiti implements for a designated work requirement or for a recognised and structured educational activity. That proposed amendment is an admirable effort, although I suspect that its implementation could be problematic. I am interested in hearing from the parliamentary secretary the government’s position on this proposed amendment. If the government does not support Hon Giz Watson’s amendment, I would expect the parliamentary secretary to explain to this Parliament how the government proposes to address this very real concern and shortcoming in the bill.

A number of members have talked about urban public art and whether the bill proposes to encompass urban public art in its definition of “graffiti”. In all honesty I listened with interest and some amusement at this debate, because to my mind the two are very separate matters and this bill does nothing to deal with the issue of public art. Urban public artists are commissioned or employed by the owner of a building or property to do public art. They have the authorisation of the property owner and when the authorisation or consent of the property owner is absent, then —

Hon Michael Mischin interjected.

Hon ADELE FARINA: That is exactly what I am saying.

When the authorisation or consent of the property owner is absent, then no matter how artistic the work may be, it is still graffiti and unlawful. However, the issue does arise in this bill in that the bill inadvertently impacts on urban public artists who are minors. The bill prohibits the sale of products or implements that are classified as graffiti implements to minors who are urban public artists, despite the fact that they intend to use them lawfully. Surely it is not the intention of this government to prohibit legitimate urban public artists who are minors from the lawful pursuit of their artistic endeavours. The government needs to ensure that such persons, whether or not they are minors, can purchase the tools and implements of their trade. I look forward to hearing the government’s response.

I want to turn to the issue of the restriction on the sale of graffiti implements to minors only. This bill restricts the sale of graffiti implements to minors only and it prohibits the sale of graffiti implements to minors who are under the age of 18 years. There is an implicit assumption that the government holds the view that graffiti offenders are under the age of 18 years, or at least predominantly under the age of 18. I am interested in learning

from the parliamentary secretary the basis of this assumption by the government. When we examine the graffiti subculture, it appears to extend to 18-year-olds and those who are older. I would be interested in learning from the parliamentary secretary for each of the past five years how many people charged with graffiti offences were minors and how many were 18 years or older. If the government does not have this data, I would like the parliamentary secretary to explain the basis on which the government decided to target minors only. I would also be interested in learning which measures the government is taking to combat graffiti in relation to the category of 18-year-olds and older.

I want to turn to the issue of enforcements. The government proposes through this bill to provide additional offence provisions and to increase penalties in relation to graffiti. The government is of the view that this will serve a deterrent effect and will be successful in combating graffiti. I have already expressed my views on this and the fact that I do not think there is any evidence to support the government's deterrent argument for this bill. Putting aside the merit of the deterrent argument, and assuming that the bill has the potential to provide a deterrent effect, clearly the capacity to enforce penalties for the offences proposed in the bill and the existing graffiti offence in the Criminal Code will bear directly on the extent of any deterrent value.

Police need to be provided with the resources and funding to enforce these provisions. I am interested to learn from the parliamentary secretary the additional resources and funding the government will provide for the enforcement of this legislation. In response to my parliamentary questions requesting additional resources for Bunbury police to combat the growing graffiti problems in Bunbury, the government's response was a deafening silence: no further resources will be allocated to combat graffiti in Bunbury. If this is the government's position statewide, the deterrent value, if any, of this legislation will be severely hampered. Clearly the biggest deterrent is the likelihood of being caught. This needs additional resources—resources which the government refuses to commit.

I now want to turn to proposed section 216, which prohibits and makes an offence the sale of graffiti implements to children under the age of 18 years. Proposed section 216 refers to a person who sells. I assume from the wording of the proposed section that it is directed at the person who actually handles the sale, regardless of the age of the person and the person's knowledge of the law. I would appreciate it if the parliamentary secretary would confirm that this is the case. I note with interest that there is no specific offence provision for retail shop owners who allow the sale of graffiti implements to a child, and that in this scenario, unless the retail shop owner actually executes the sale, the retail shop owner will not be guilty of an offence under the bill. I would be interested to hear from the parliamentary secretary whether the government considered this and why such an offence is not included in the bill.

I am concerned that 16-year-old part-time sales assistants who are not aware of the law and who have not been adequately trained by their employer in relation to these provisions under the Criminal Code and the prohibition to sell graffiti implements to minors may find themselves guilty of an offence under the bill. It concerns me that there is no defence provision for a child in this situation. Surely the primary responsibility should rest with the employer and not with the 16-year-old part-time employee who may not have been adequately trained and may not be aware of the law. I ask the parliamentary secretary: is it the government's intention that such a person, a minor, should be fined \$6 000? This seems to me to be a somewhat unreasonable position.

My nephew recently got his first part-time job as a sales assistant. It concerns me that he and others like him could be in a position in which they could fall foul of this bill due to inadequate training by an employer, yet the bill places no requirement on the employer to ensure that the employees are aware of the law and that graffiti implements are kept in a secure location or display unit. I therefore question the reasonableness of this approach. I ask the parliamentary secretary to address in his reply whether lack of knowledge and/or inadequate training would be a defence in such a situation, and why the government has not specifically provided this defence in the bill. I would also be interested to know why the government has opted to provide an offence against the salesperson only and not against the retail shop owner.

In concluding, the government needs to establish the need for this legislation. It should not simply state that this is what the government's position is, but should explain how this legislation will be effective in combating and reducing graffiti in our community. The government also needs to explain what other measures it has explored to combat graffiti and why these were rejected in favour of the provisions in this bill. If the bill is part of a package, I invite the parliamentary secretary to tell us what other measures the government will be implementing to combat graffiti.

I remain unconvinced that the alleged preventive measures provided in this bill are sufficient or are likely to be effective. The government needs to identify why youths are turning to this form of expression. We need to understand why children are on the streets late at night and in the early hours of the morning doing graffiti when they should be at home. We need to assist parents who are struggling to discipline and educate children who are engaging in these activities. We need to look at whether we are providing appropriate and sufficient facilities to

entertain and occupy our youth. If we fail to address these matters, we will fail to combat the upward trend in graffiti in our community. This bill may go some way to addressing this problem, but it will not go all the way. The government needs to do more to address this issue.

That concludes my comments. As I was not given leave to table and have these documents incorporated into *Hansard*, I am now going to read them. The first is an email from Kate Greenaway, which has been sent to members in this chamber —

To Whom It May Concern,

My name is Kate Greenaway, I'm 24 years old, and I am a practicing artist who uses aerosol spray paint and markers often in my painting work. I am also a practicing Christian, and though I do enjoy 'graffiti art' done well, I am against it morally due to it being someone else's property you're making art on, therefore it's stealing. Having said this, I have been using tools in my work which are more well known to the reader for graffiti, however I have never used them on walls, only canvas since before I was 18 years old (attached are some pictures of my painted works).

Almost two years ago I made the decision to put my commercial art practice aside for a little while and get a degree. I am currently in second year at Curtin University, a choice which has left me without many of the contacts that I had when I started the course. The reason for this is due to the gallery I was working with, Keith and Lottie was targeted and made an example of by police looking to find graffiti artists and taggers. I don't know what happened specifically, but I do know that if you look at William street today you'll see that where Keith and Lottie used to be, it is no longer. It wasn't the paint sales that took the hit for all that unwanted attention, it was the gallery, one which helped get young artists like myself up and running.

I'm not sure if you've noticed that the climate of art, it's culture and accessibility is completely different today than it was even a decade ago. The introduction of the internet to the world at large has far surpassed any other technological change affecting the art scene as a whole since the camera was invented, allowing copies or duplicates to be made of an artist's work, changing the context a work is seen in, and making it accessible to the masses. Along with that accessibility has come a generation with more artists than ever before, as creative industries such as graphics design are used on almost every level of the contemporary market. A young artist no longer needs to starve in order to draw for a living they are no longer a distinct and separate part of society but a huge part of the population: one with degrees and jobs. Of course the original definition of an artist still exists, the one who depends on gallery run shows for their crusts, and some do really well, but you can't ignore the numbers of art students graduating all over the world every year. Galleries certainly can't support them all.

I don't know how much the reader knows about the blooming art scene centering in, but not confined to Northbridge, or whether you are aware of how many young teenagers choosing art as their future career of choice, or looking to artists as heroes as well as musicians and actors. The climate in Perth is changing, creative industries are becoming much more accepted as career choices, and very economically viable in our city. Northbridge is now known for something other than nightclubs and International food, it's known for a great number of small businesses and art galleries encouraging creativity, setting an example for the next generation of kids who are looking at their futures and can now see that dreams can be achievable, you can be who you want to be if you put in a little work. I want the reader to understand the effect this bill will have on the scene I'm speaking of. The mediums under fire in the upcoming Criminal Code Amendment (Graffiti) Act 2009 are really versatile. Copic markers, for example, are definitely more well known as the tool of a graphics designer, not a graffiti kid. They are very unique in their use and not easy to replace with a medium a young person under 18 would be able to buy. If a graphics design student is living out of home and studying at TAFE, how is s/he able to get supplies for his/her course? The art world is a completely different place than it was before, markers are used in many artist's and designer's practices, as are aerosol paints.

I don't know if I'm making myself clear, but it is shops like The Butcher's Shop that are actually good for our community and local economy, not bad. While stopping in to buy paint I have often seen young boys crowded around shop owner Drew at The Butchers Shop, and he is not schooling them in teenage delinquency, but in fact really sowing into their lives and encouraging them to aim high and strive to be better. He's spending time with them because he wants to, and these boys really don't get that often. These are kids who slip through the cracks almost everywhere, but not here. But this letter isn't even about the stereotypical delinquent who tags and destroys and defies and rebels (though I have met some of them and they're just kids who've never been told they have a future, and if you want the opinion of someone in the community you need to look at schools to start preventing that kind of behavior). it's a

letter from someone who doesn't want the next girl like me to be restricted because of the actions of others (who will find a way to graffiti, bill or not).

By letting this bill through, I have no doubt that it will be a negative, not positive impact on our city. Many, many kids will not be able to buy supplies they need to make the art they could make if the chance was there. It is here, and I've seen many positive results in younger artists, but you have the power to take it away, or allow them to keep working towards their future. Art is very important to a community. For years Perth has been losing creative's to Melbourne, Sydney and overseas, but they are starting to stay. The ones that have left are starting to return, it's starting to become a thriving place, but this isn't they type of thing which encourages people to stay, it's a way of pushing people away.

I really encourage you to look positively on the amendment for educational purposes. I still don't like the bill even with it, but it's certainly better than the alternative.

Thank you so much for reading,

Kate Greenaway.

Hon Sally Talbot: It is a great letter.

Hon ADELE FARINA: It is an excellent letter. I would also like to read in an email received from George Domahidy —

Dear Member of Parliament,

I am writing to you with concerns about the proposed new graffiti laws. My name is George Domahidy and I currently run a mural painting business and I am also involved as an artist mentor of the 'Keep it Legal' program in Armadale. This program caters to around 40 young graffiti offenders and tackles the issue of graffiti at its roots through engaging the offenders in a pro-active solution to the problem.

What you may fail to recognise with the new graffiti laws is that they have such a large scope and would seriously effect young artists in the community, using texta's and spray-paint for legitimate art reasons. I gained my artists abilities largely through wide experimentation of a number of different artistic mediums as a teenager, something that would not be so easily accessible if this law was introduced.

I also feel that the proposed new law would have a seriously negative effect on the community, from my work with youth at risk I can assure this law will increase more costly vandalism such as "scratchitti" or scratching of windows with rocks, and anti-social vandalism such as destruction of property, arson, etc.

Please think carefully when voting on these new laws and consider West Australian's young artists and the broader community when reviewing the law.

Please feel free to contact me to discuss this further.

With that, I will conclude my comments on this bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [5.59 pm]: I rise to speak on the Criminal Code Amendment (Graffiti) Bill for a number of reasons. I am quite quizzical. We talk about the broadest concept of graffiti and then we also talk about children applying graffiti. We also talk about the methodologies of applying graffiti. All those elements seem to me to be quite flawed in many respects. I want to deal firstly with why we are targeting just children. Are children the fount of all evil? Why are we not making it an offence to sell these products or implements to adults, who are quite effective at doing graffiti? I will deal with some cases in point. I am really concerned as to why we make that differentiation.

Then we come to the nature of the implements. We talk about a can of spray-paint and we talk about a pen, a marker pen or a similar implement. In many cases the graffiti that I am confronted with in the Mining and Pastoral Region is not done with any of those implements.

Sitting suspended from 6.00 to 7.30 pm

Hon ROBIN CHAPPLE: In dealing with this matter, I would like the parliamentary secretary, when it comes to his response, to answer a few of the questions that I will pose. This is not necessarily my area of portfolio expertise, but I have an interest in the effects of graffiti from a longstanding perspective as a member of local government and also from working through graffiti issues throughout the Pilbara. My first concerns are with the graffiti implement. It is defined as being a spray can, marker pen or similar implement that has a tip over six millimetres wide and contains fluid which is not water-soluble and which is capable of marking a surface. Those who have seen graffiti or tagging know that a lot of it is done with diamonds, especially on the glass of buses and surfaces such as that. Why are diamonds not included in this proposal?

Hon Liz Behjat: They use CDs, not diamonds.

Hon ROBIN CHAPPLE: They also use diamond cutters—the little ones that can be bought to cut glass. When it comes to spray paint, any form of paint can be used; it does not necessarily have to be spray paint. People also use chisels and screwdrivers and such things. I will shortly explain why I am going down this path. I am interested in why those items will not be included in the bill. I am also interested in why we are saying that this legislation applies to children. Are tagging and graffiti purely the domain of children? I would say no. I will again shortly articulate why I say that. A person who sells a graffiti implement to a child commits an offence and is liable.

The point I want to touch on is how we as a council dealt with it in Port Hedland. From 1988 until about 1994 Port Hedland had a lot of graffiti, tagging and murals around the place. The council thought that it could have rangers out all day and night trying to catch people, it could impose fines or whatever. We did not think that it would solve the problem. The way we went about solving the problem was that the council hired some artists from Perth. They were engaged in the Pilbara for about three or four months to organise and teach the kids. We designated places around shopping centres and such areas where a wall that was being defaced could be turned into an art gallery for the kids who were doing the defacing. With proper education and instruction we lifted those children from a criminal activity to doing something really positive and good for the community. The artwork was fantastic. The net result was that we educated those kids out of the process of pure vandalism. We also set an imperative in the community whereby the taggers or those people participating in graffiti were actively opposed by those kids whom we had got out of the system. Therefore, during the late 1980s and early 1990s graffiti largely disappeared as an issue in Hedland because of proactive and not punitive actions. I therefore think that having punitive measures will not necessarily solve anything. It might well drive the whole thing underground where it will become much more of a problem.

Let us talk about vandalism, tagging, painting and where people graffiti. In this case, as identified by the bill, we are merely dealing with children marking a surface. I must admit that I find it offensive to find tagging, but the surfaces used are of relatively little value. The Pilbara contains some of the world's greatest rock art. It is of world heritage value, as acknowledged by the Premier, yet adults using diamond tools, grinders and chisels are carrying out vandalism in that area. It is being done all over the face and facets of that rock art. What are we doing about it? Zero. We have no program in place to stop adults carrying out vandalism on artefacts that are far more valuable than somebody's fence or wall. We have a totally misguided approach to what we should or should not protect.

Hon Michael Mischin: Are you suggesting how we should deal with it?

Hon ROBIN CHAPPLE: We have certainly made a number of suggestions to the department on many occasions.

Hon Michael Mischin: About diamond cutters?

Hon ROBIN CHAPPLE: No, the issue is not about banning diamond cutters. The issue is about putting people out there to manage the resource.

Hon Michael Mischin: Security guards, 24 hours a day and seven days a week.

Hon ROBIN CHAPPLE: Every other heritage place of that ilk in the rest of the world is covered by those situations.

Hon Michael Mischin: Will we take it out of the mental health budget?

Hon ROBIN CHAPPLE: I would suggest that it be taken out of the \$80 million the government has just given to the mining industry. I did not necessarily want to get into arguments around the chamber but I wanted to put some alternatives. I go back to the Port Hedland example. We have the work being carried out by the Millennium Kids, especially working with the Public Transport Authority. Those outcomes have been rather incredible and to the benefit of the community and the Public Transport Authority. The program has attracted not only state recognition, but also, to a degree, national recognition. Judge Reynolds, who dealt with this issue, is reported to have said —

The outstanding success of the Right Track program is of great significance in how to best achieve positive outcomes in dealing with the behaviour of young people.

Its success supports the need for a paradigm shift on how programs for young people are designed and implemented. It involves a partnership between a Government agency, the Public Transport Authority and a community organisation Millennium Kids, delivering an innovative program based on consultation and engagement of young people.

Who better to identify root causes of behaviour, solutions, the best way of communicating with young people and the likely responses by young people than young people themselves.

Empowering young people and giving them ownership of solutions is the best means of maintaining their participation and cooperation in programs and enhancing or restoring their connection with community.

Judge Reynolds said about the work that the Millennium Kids had been doing with the Public Transport Authority —

Congratulations to all concerned. I am delighted to learn that the PTA is extending the program.

These are the sorts of things that the government needs to be doing, instead of going down another punitive route that will drive these sorts of issues further underground and most probably create a bigger problem at the end of the day.

I said earlier, we have an irrational disconnect. Quite often we are more than happy to protect different aspects of people's front yards, fences or walls or an empty bus than we are to protect heritage areas that are 30 000 years old or more. If members go to the Burrup Peninsula, they will see artefacts that are defaced on a daily basis. However, the government does not have a program to counter that and, for two reasons, it is not interested in doing anything about it. Firstly, it is out of sight and out of mind and, therefore, it does not care and, secondly, it is Aboriginal, so it is not an issue.

I am concerned that many of the people who engage in graffiti will not be caught by this legislation, either through the restriction on some implements or the lack of restriction on other implements. There are many people in our society who are participating in acts of graffiti and tagging around this state.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [7.43 pm] — in reply: I thank members for their contribution to the second reading debate on the Criminal Code Amendment (Graffiti) Bill 2009. I will deal with the issues that have been raised by way of outlining, firstly, the current position; secondly, the problem that the government considers needs to be solved; and, lastly, what this legislation proposes to do as part of a raft of initiatives to deal with the scourge of graffiti vandalism.

I preface my remarks by referring to the way that this debate has been approached. For something that is relatively benign in the effective change to the law and on juveniles, which seems to have exercised the mind of many members, we seem to have spent far more time on this legislation than we did on the legislation dealing with mandatory sentencing.

The Australian Labor Party members, in particular, commenced this debate by saying that they supported the bill. Several members from that side of the house made long speeches acknowledging the menace and scourge of graffiti vandalism, one of the last being Hon Adele Farina. I am not picking on her in particular, but her remarks are the freshest in my mind. She started her contribution to this debate by saying that the opposition supports this bill and then she spent the rest of her time telling the house what is wrong with it: how it will not work; how we have not established the need for it; how punitive penalties will not have any effect; how little juveniles—rosy-cheeked children—will be sent to jail; how it will drive the whole business underground; how artists will find their creative bents stifled; how it will affect the mural painters; why it does not provide for a distinction between those who are vandals and those who are truly artists; and so on and asked: how would we distinguish between graffiti artists and graffiti vandals?

If there is any pattern that I have detected in my few months in this place, it seems to be one of the ALP wanting to sit on the fence. They do not want to be seen as people who are not doing anything about a social problem and delinquency, but they want to jump on the bandwagon. If this legislation happens to have some sort of an effect, they will be the first to say, "Yes, we were right behind it—100 per cent. We supported it." However, if this bill does not achieve its intended effect or some unexpected consequences flow from it, they will say, "Oh, look, we told them there were all these things wrong with it. Don't blame us; it was the other side."

I turn to the Greens (WA). I have a considerable respect for Hon Giz Watson as a parliamentarian and for most of the arguments that she puts in this house. I may not agree with them, but generally they are cogently argued and well-founded. However, her position on this bill was terribly disappointing and misconceived. It seemed to reflect very much the idea that somehow this legislation is focused entirely on pillorying and anathematising children, which it is not. Her position also reflected the argument that was presented by several members who addressed this house—that is, that somehow this proposal involves a radical change to the law and is another example of how this government immediately resorts to punitive measures to solve a problem. A moment's reflection on and consideration of this bill will show that that is not the case at all. In fact, what is proposed are two relatively modest but significant initiatives. This government has not pretended, and this bill does not purport, to provide a single solution to the problem of graffiti vandalism, and I will explain why in a moment.

Other measures are being used by the government. One of them is, of course, the reconstitution of the Graffiti Taskforce, which was put into place under the Court government, disbanded by the Labor government but then sort of dusted off at the end of its term and pumped up a bit to show that it was actually doing something and to pretend that it was listening to community concerns. One of its greatest achievements was a fridge magnet of which Hon Ken Travers was inordinately proud. I recall that when the Howard government introduced the idea of a fridge magnet as part of its anti-terrorism package, the idea was derided, but, no, a fridge magnet was the greatest achievement of the Labor government in dealing with graffiti. It is a lasting legacy because the phone number is still active, but we go a little further than that.

I lastly refer to the position of the National Party. I say this because I entirely accept that Hon Philip Gardiner is looking at the broader picture, and I make no criticism of that. He raised debate on whether antisocial behaviour is the product of hereditary or environmental factors, or a mixture of both. I suspect it is a mixture of both. Indeed, I have no reason to doubt that the way a mother treats a child in the womb may actually have an influence, along with a lot of other things, on how an adult develops. With respect, tracing antisocial behaviour back to the human genome is not a way of dealing with the immediate problem. Whatever may happen many generations into the future may very well be influenced by what we do here and now; nevertheless, this government is faced with an immediate problem and is trying to address a legitimate community concern.

Hon Robin Chapple commented that somehow we value garden fences more than we value traditional art, but that is not so at all. I am sure that he would be the first to agree that we and the courts should not pull any punches, notwithstanding that we are dealing with punitive measures, on someone who desecrates ancient art. I do not care whether it is an Aboriginal rock art painting or hieroglyphics on the Egyptian pyramids or whatever; any sort of damage of that nature or cultural vandalism is something that this government is against. However, there are limits to what can be done. As I say, the proposals we put forward do not pretend to be a solution to the problem; they are simply one aspect of it and they send a message.

I will say something about the current position and lay the groundwork for what the government proposes to do. It is wrong to suggest that somehow we are looking at increasing penalties to solve a social problem. The lawyers on the other side of this house would know that section 444 of the Criminal Code states in part —

Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime and is liable ...

Except in circumstances where it is damaged by fire —

... to imprisonment for 10 years ...

The penalty at the moment is 10 years' imprisonment for the commission of that crime, and it has been that penalty for a very, very long time.

There is a circumstance of aggravation that kicks the penalty up to 14 years' imprisonment. That is an example of how punitive penalties are supposed to discourage and deter. That circumstance of aggravation comprises circumstances of racial aggravation. Whereas the Australian Labor Party seems to be most concerned that the government is purporting to deter people by increasing penalties in section 445, it did not seem to have a problem with the higher penalty in circumstances of racial aggravation as an attempt to show society's disdain for and condemnation of that sort of damage done with that sort of motive. However, there we have it.

Section 445 deals with damaging property and is the section that we are considering amending through the bill. That provision was introduced to the Criminal Code by the Labor Party in 2004. I think it took effect in December 2004. 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.

That is the section that we are dealing with. That is not a new section or a new offence. I think it was originally contained in section 80 of the Police Act and it was the offence that was most commonly used for charging offences of graffiti damage and graffiti vandalism. It is very similar to the unlawful criminal damage offence but removes the element of "wilful". Most of the offenders are charged under that provision by police and other officers—transport officers and the like, I presume—for the sort of damage that we are concerned about. The provision embraces other forms of damage as well, but it is the most frequently charged offence for cases of graffiti vandalism.

The penalties for that offence of 12 months' imprisonment or a fine of \$12 000 are considered low by the government and to be out of kilter with the sorts of penalties that are available in other jurisdictions for similar

misconduct. That is one reason that the penalty is being increased. It does not suggest that the increase in the penalty will all of a sudden send shivers of fear down the spines of those who decide that they will tag street signs, walls and the like. It communicates to the courts that deal with these sorts of offenders what Parliament has in mind. Members of Parliament cannot pull the judges in and say, "Listen, you guys are doing a pretty poor job of this. We think these penalties ought to be higher." The only way Parliament can communicate that desire is by the rather clumsy method of increasing the penalties under the offence-creating provisions, and that is what is sought in this bill.

I will digress for one moment to deal with one aspect of Hon Giz Watson's argument. She made a great deal out of a particular incident in New South Wales. If I understood correctly, it had been drawn to her attention as a terrible injustice under similar legislation in New South Wales by which some girl had been charged and some mandatory sentence imposed for defacing a wall with some substance that could actually be removed. That may be right, but for each case like that we have other cases that are far more offensive to the public mind. Coincidentally, I think the day after Hon Giz Watson made her contribution to this debate in this place, there was a report in *The West Australian* about graffiti on board a bus. Page 51 of *The West Australian* of Wednesday, 23 September stated —

Surveillance cameras captured a youth putting graffiti on the floor of a southern coast transport bus bound for the Rockingham train station.

That happened about 3.30 pm on a Tuesday. He graffitied his tag name "HITTS" before getting off. He was between 19 and 22 years of age. There may have been a terrible injustice in New South Wales, but for every one of those, there are about a dozen cases of this sort of behaviour of inexcusable defacing of public property. The government needs to take action to try to do something about it.

The article does not say with what the youth graffitied the bus in question. I understand that Hon Robin Chapple may not be familiar with what goes on in the big smoke as he is familiar only with the sort of implements used in Port Hedland and the like; however, one need take only a cursory look down the streets that we travel in around parts of Perth to know that two items are very frequently used by graffiti vandals—namely, spray paint or a thick marker with indelible ink. Those implements are used to deface everything from walls to street signs, windows, vehicles—the works. They are easily carried and, at this stage, very easily purchased. Hardware stores sell spray paint. Some places, like Bunnings, tend to have it locked up—not to prevent juveniles getting access to it, but for security purposes so people do not shoplift it. However, spray paint is readily purchased. It may be that children have legitimate reasons to carry spray paint around. It may be that they are budding artists and they have large enough canvasses that they can use at home and exercise their talents on that by purchasing and using spray paint or indelible ink markers with thick tips six millimetres wide. It may be the case that there are legitimate artistic reasons for children having those implements. By and large, those things are among the preferred tools of the graffiti vandal. That is what this government is trying to address in a modest way. It is said that somehow this interferes with the rights of children. The UN Convention on the Rights of the Child has been quoted yet again. There is nothing unusual in banning the sale of certain things to children. Tobacco cannot be sold to children. We focus on the retailers of tobacco and say that they cannot sell tobacco to anyone under the age of 18 years. I do not believe it is an offence for anyone under 18 years to have or to use cigarette products. I am not aware of anyone being prosecuted for that. However, there is a ban on their being sold to children. Why? Because it is antisocial, it is a health risk and it is something that Parliament in its wisdom has decided ought not to be readily accessible to children because they are not of mature enough years to appreciate the dangers, and people make profit from their misuse of a deleterious substance. Likewise, there are limits on selling inflammable substances to children.

We place all sorts of limits on children, and this is simply one of them, but it is not directly an impediment or a restriction on children. No law, either proposed or current, prevents juveniles from possessing spray paint, indelible markers or any other artistic implement. There is no law against them using them for legitimate purposes, so where is the infringement on their so-called rights in this area? There is none. It is simply limiting the supply of a commonly used set of implements to make it a little more difficult for graffiti vandals to purchase this stuff legitimately and easily across the counter and to misuse it. Yet we have spent a week now being told about what is wrong with that. I understand there was even a protest in front of Parliament House—at least one was scheduled today—by some group trying to tell us that the rights of artists were being infringed and that somehow artists were being categorised as criminals. I do not know where they got that from because that is certainly not something one can detect in the legislation. I have been asked whether this government has thought how it will restrict these articles from being sold. It is to be in the same way that we restrict tobacco from being sold to juveniles: it is to be kept out of their reach, staff are instructed not to sell it, and owners bear the responsibility of ensuring that that is the case. But there are other things that will be done in this case, and I will come to them shortly.

I digress again for a moment to deal with two letters that were read out by Hon Adele Farina. I am obliged to her for having read those letters out and tabling them, because I received them too. I note that, notwithstanding her impassioned proffering of those letters as some kind of argument against the government's position on this matter, they plainly were not sufficiently persuasive to encourage her or any member on the other side of the house to oppose this legislation. Again, it appears to be a case of fence sitting.

Hon Ken Travers: Challenging the government to explain how its strategy will evolve is not fence sitting.

Hon MICHAEL MISCHIN: What was the point in reading out the arguments in this letter?

Hon Ken Travers: It was to have them on the record so the government can rebut them. It is your legislation.

Hon MICHAEL MISCHIN: I appreciate the interjection because now I will rebut them and I will read out what I had to say about them. I do not know whether anyone on the other side was sufficiently moved to explain anything about the legislation, but here we go.

Hon Sue Ellery: This is your reply to the issues that were raised, so it is appropriate for you to respond to it. That is what your job is now—to reply to the issues raised.

Hon Simon O'Brien: You don't need to lecture; he is clearly a very capable representative.

Hon MICHAEL MISCHIN: I am grateful to the minister.

Hon Ken Travers: As an opposition, we can support a bill but still put forward the arguments that people put to us. That is our job. Your job is —

The DEPUTY PRESIDENT (Hon Max Trenorden): Members, I call you to order.

Hon MICHAEL MISCHIN: I am sorry, Mr Deputy President; I interrupted you.

Dealing with the letter from Ms Greenaway, I will not read out what she wrote. Much of it was plainly genuinely held but most of it was misconceived ideas about the legislation and its effect. My response to her of 11 October reads —

Dear Ms Greenaway

Thank you for your letter. I appreciate your informing me of your thoughts on this proposed law.

The Legislative Council is currently considering this Bill. As Parliamentary Secretary to the Attorney General, I have the carriage of the Bill in the upper House on his behalf.

The Bill proposes two modest, but significant, measures against graffiti vandalism.

One is to double the penalty for unlawful damage contrary to s.445 of the Code to up to 2 years imprisonment or a fine of \$24,000 or both. Sec.445 of the Code is not limited to graffiti damage, but the majority of cases would be charged under that provision. The increase in the penalty will signal to the Magistrates and Childrens Courts which deal with these cases that Parliament requires more punitive and (hopefully) deterrent penalties to be imposed.

As you say, the second measure addresses the availability of certain items commonly used for graffiti damage. The government does not pretend that these are the only items used in graffiti vandalism, or that they are used by juvenile vandals exclusively. However, the government does seek to make it more difficult for juveniles to simply purchase such items 'over the counter' for the purposes of then vandalising property.

I digress for a moment to say that, of course, it is limited to juveniles. We cannot prevent adults from buying spray cans or markers. There are practical elements to this law and practical limitations to what the government can achieve. Why do we not ban diamond cutters? With respect, commonsense would tell members why. They are legitimate tools that are used for legitimate purposes. In the same way that it would be impractical to ban textas generally and tins of paint. However, we do not often see vandals going out with tins of paint and painting on walls after midnight on suburban streets and then running away! What they do is take spray cans and easily concealed indelible markers. Members will note that we do not ban water soluble inks, simply because they can be corrected and the problem can be fixed. To continue with my email to Ms Greenaway —

Some of what appears to concern you about the proposed law is misconceived.

The proposed law does not penalise juveniles for the possession of these articles, —

I digress again: this seems to be part of what has been troubling those who have been speaking against the bill —

nor does it prohibit them having access to these articles or to use these articles for legitimate purposes; it simply seeks to prevent them being sold these items. It does not prevent the sale of these items to

adults. So it is wrong to think that it will have any effect upon ‘graphics designers’ or legitimate artist students.

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

I note your comments concerning copic markers and the like. There is nothing in the Bill that ‘bans’ these items or stops their use by either artists or graphic designers, young or old. The Bill is concerned with the sale to juveniles of spray paint and non-water soluble ink marker pens with tips greater than 6 mm wide. The number of juveniles with a legitimate need to purchase non-water soluble ink marker pens with tips greater than 6 mm wide (ie: wider than that of a highlight pen) or cans of spray paint would be very small, and I suggest that those who do happen to need them for legitimate artistic purposes can either have them supplied to them by responsible adults or made available to them by their art class.

All of a sudden, though, it seems there may be somewhere in Western Australia one under-18-year-old artist, one budding Banksy or Rembrandt, who needs these articles—a greater than six millimetre wide marker pen with indelible ink or a spray can—who does not know any adult who is prepared to trust him with it and be persuaded it is for a legitimate purpose and supply him with a can of spray paint or a marker pen. No doubt he or she is living in a garret somewhere trying to earn their living by freelancing as an artist! The government is prepared to take the risk that we will lose one artist in that fashion.

I suggest that most legitimate art students would have access to these things, whether they are 18 years of age or younger, or could be supplied with them by responsible adults and under responsible supervision for artistic purposes.

The letter continues —

I note your volunteering comments about ‘The Butcher Shop’, —

I digress again to say that The Butcher Shop is an art supply store in Northbridge. I will have a bit more to say about that in a moment. The letter continues —

and your wanting to make clear that it and like shops are good for the community and local economy. I do not know what prompted your defence of ‘The Butcher Shop’ specifically. I agree that art supply shops are an asset to the community; but I also make the point that to the extent that these sorts of stores rely for their income upon the sale of spray paint and other graffiti implements to juveniles, knowing (but not caring) that they are profiting from vandalism, then they may have to readjust their market focus.

I note that ‘The Butcher Shop’ website encourages opposition to the Bill. The invitation to oppose the Bill is illustrated with a picture of a box of crayons. Even a cursory reading of the Bill would reveal that it is not concerned with crayons or many of the other items mentioned as being affected by the proposed law. For reasons I can only guess at, those opposing the Bill seem to be exaggerating its scope.

This might be an opportune time to deal with that question. The issue of lipstick has been raised. The issue of other sorts of artistic material has been raised. The scope of the bill is very narrow—it deals with spray paint and the thickness of a tip on a marker pen that uses indelible ink; namely, the sort of stuff that is commonly used for graffiti vandalism, and the sort of stuff that juveniles tend not to have any obvious legitimate need for.

Hon Ken Travers: Just out of interest, are you going to table that letter by any chance at the end of your speech?

Hon MICHAEL MISCHIN: If the member would like me to do that, I would love to do that. I was proposing to do that, actually.

Hon Ken Travers: Good.

Hon Norman Moore: It would be good if you would just ignore him for the time being and we could make some progress on this legislation, which is taking a very long time.

Hon MICHAEL MISCHIN: My letter continues —

You mention the owner Drew’s influence upon teenagers, but you have not given me sufficient information about what passes between him and these young boys to be able to judge for myself what he may be schooling them in, or what he may be encouraging them to do.

However, I have visited the shop. I note that he has for sale, for example, periodicals with titles such as 'Graffiti Magazine'. The copy I perused, amongst other things, contained an article illustrated with photographs glorifying the defacement of public transport. No doubt some would argue that this is not mere tagging and is an outlet for artistic creativity by those who fancy themselves artists. However, I would argue that the vast majority of the community who do not share that conceit would view it as vandalism and unlawful. I venture to suggest that those who purchase spray paint and other items from Drew and have a bent for that sort of art can only find encouragement from such journals.

I seek leave to table that response. It has attached to it the original letter from Kate Greenaway.

Leave granted. [See paper 1409.]

Hon MICHAEL MISCHIN: The second letter that was read out by Hon Adele Farina was from a Mr Domahidy. She read out the original letter. I responded as follows —

Thank you for your note.

Plainly you have not read the Bill. It does not deny the use of art material to legitimate artists, young or old.

If I understand you correctly, you contend that if graffiti vandals are denied the opportunity to deface property with spray paint or indelible markers, they will do so by other means—so there should not be any attempt to deny them ready access to spray paint or indelible markers that they use to deface property.

I do not regard that as an acceptable means of addressing the issue of vandalism.

In fairness to Mr Domahidy, he also wrote back to me in respect of that. I do not propose to read out that letter, but it is available as part of my response. He took issue with a number of my conclusions. I did not have the opportunity to respond to that, and I do not propose to. My response is the one that I have made to this house. Mr Domahidy claims that in Adelaide, where a recent policy has been implemented that, he says, is similar to this one, there has been an increase in graffiti-related vandalism. That may be right. However, whether that is a product of this sort of legislation is questionable. I seek leave to table that letter from Mr Domahidy, my response, and his response to my response.

Leave granted. [See paper 1410.]

Hon MICHAEL MISCHIN: I think we all understand the problem of graffiti and graffiti vandalism. All the speakers on this bill have spoken about that in one way or another. Members opposite claim that this government is a one-trick pony, because all we can do is increase penalties and create new offences. That is not the case at all. I was asked about some statistics. It may be opportune to deal with that issue now. According to the information that I have, the reported incidents of graffiti increased by more than 30 per cent between the 2003-04 and 2007-08 financial years. It is a social problem. It is committed by and large by juvenile delinquents. In 2003-04, a total of 10 426 incidents were reported to police. In 2004-05, that had reduced to 9 247 incidents. In 2005-06, the number of reported incidents was 9 294; in 2006-07, the number was 13 852; and in 2007-08, the number was 15 972.

This government has reinstated the Graffiti Taskforce. That includes not only the graffiti hotline and the graffiti hotspot clean-up fund, but educational forums and proactive campaigns targeting offenders. One of the aims is to prevent and reduce graffiti vandalism. Another of the aims is to ensure the rapid removal of graffiti. That tactic is well recognised; namely, that if the tag disappears, no immortalisation of the offender can be occasioned by the tag being there, and part of the attraction disappears. We have speculated on the motivations of the people who commit graffiti vandalism. I do not know. Perhaps we ought to ask some of the journalists who have left their mark in the press gallery over the last several generations. They might be able to tell us what their motives were. It is akin to a dog urinating on a lamppost: it is a way of marking territory. We heard Hon Phil Edman speak about the things that he has found out as part of the Rockingham Kwinana Development Office and about the way that certain criminal gangs of juveniles and young adults will use tagging to mark out their territory so that they can target houses that they plan to burgle and the territories that they regard as theirs for the purpose of committing crimes. On that aspect I should say that we have been criticised considerably and that all sorts of suggestions have been put by members on the other side of this house about how there are other ways of dealing with the problem of graffiti. We already recognise that. The Graffiti Taskforce is one of those ways. It is a shame that Hon Giz Watson and other Greens members were not present to hear what Hon Phil Edman had to say about this issue.

Hon Giz Watson: Please do not assume that just because I am not in the chamber I do not read the *Hansard*.

Hon MICHAEL MISCHIN: I am grateful for that. I appreciate the fact that the member has read the comments that were made by Hon Phil Edman, and I thank her for acknowledging that, because I thought that what he had to say about this matter is not only an example of how the government is approaching this problem at a local level, but, also, if it proves to be successful—there is every indication that it will be to a degree—it is something that can be tried out in other places. It is simply wrong to suggest that this government is looking only at the two elements in this bill as a solution to a longstanding social and criminal problem.

Furthermore, the Graffiti Taskforce seeks to ensure that sanctions for offenders are appropriate and enforced, and supports local governments and communities in their fight against graffiti. Another feature of the government's program—legislation has not yet been introduced, but it will be—is the preventive behaviour order, under which certain persons who commit antisocial crimes may be subject to a preventive behaviour order, limiting their access to certain places and the people with whom they may associate. However, that is for the future.

I was asked about the sorts of representation of youth groups and the like involved in this measure. As it happens, there has been consultation. The Small Business Development Corporation was consulted by the Attorney General, and it appears that it had no objection to the proposals, but it was concerned that there should be an education program for small businesses about how to deal with the consequences of the legislation. That is something that the Office of Crime Prevention will be doing. The Department of Local Government supports the bill. The Department for Child Protection had no comment on it. The Office for Youth had no objection to the bill, but took the trouble to point out the various presumptions against juveniles being detained or imprisoned for offences, and the government is well aware of that. This legislation does not specifically propose a bias towards imprisonment—no mandatory penalties are being imposed—and it does not seek to subvert the principles of the Young Offenders Act. It is simply sending a signal, by way of the increase in penalties, that whether it is committed by adults or juveniles, Parliament takes this offence more seriously than it did before. The key provision—the one that introduces an offence—does not target juveniles at all; it is focused on the behaviour of the vendor. As I have already pointed out, there is nothing unique or unusual about that.

The Graffiti Taskforce includes representatives from a broad cross-section of responsible authorities and groups. There are representatives from the Department of Corrective Services, the Department of Education and Training, the Department of Housing, the Department of the Premier and Cabinet, the Office of Crime Prevention, the Public Transport Authority, Main Roads WA, the Water Corporation, the Western Australian Local Government Association, the WA Police, Western Power and the Office for Youth. It is not a matter that is solely within the scope and responsibility of the police. There has been consultation with the Office for Youth.

I was also asked about the incidence of prosecutions. Some caution is required in the interpretation of these figures. As I mentioned, graffiti offences were originally dealt with under section 80 of the Police Act. That section was replaced by section 445 of the Criminal Code, which took effect in about December 2004 as a consequence of the passage of the Criminal Law Amendment (Simple Offences) Act 2004. Since then it has apparently not been possible to separate charges laid for graffiti damage from other damage dealt with under that section but, as a guide, it appears that in 2005 under section 445, 353 charges were laid against juveniles and 1 168 against adults, with a grand total of 1 521. That will be an underestimate, because the full impact of the change to the law was not felt until part way through 2005. In 2006, 2 503 charges were laid against adults and 835 against juveniles, making a total of 3 338. In 2007, 2 436 charges were laid against adults and 916 against juveniles, making a total of 3 352. In 2008, 2 284 charges were laid against adults and 844 against juveniles, making a total of 3 128. As far as court outcomes were concerned, one must be more careful, because the figures I just gave are for the number of charges laid, not necessarily the number of convictions or the number of persons charged. In 2005, 24 adults were imprisoned, including under suspended terms of imprisonment, of a total of 478 dispositions. In that same year, four juveniles were detained or imprisoned, of a total of 76 offenders. In 2006, 66 adults were sentenced to imprisonment, including suspended terms of imprisonment, of a total of 1 162; two juveniles were imprisoned or detained of a total of 236. In 2007, 44 adults were sentenced to imprisonment, including suspended terms of imprisonment, of a total of 1 184 adult offenders. In that same year two juveniles were sentenced to either detention or imprisonment of a total of 273 juveniles. In 2008, 62 adults were sentenced to terms of imprisonment or suspended imprisonment of a total of 1 151, and four juveniles were sentenced to either detention or imprisonment out of a total of 268 offenders. The remainder were dealt with by way of intensive supervision orders, community-based orders, fines or conditional release orders, were found not guilty or had prosecutions terminated. In the case of juveniles, there were juvenile justice team referrals, or no punishment imposed for some other reason.

The number of people being imprisoned for these offences is relatively small. The increase in the penalties will not necessarily increase the number of people being imprisoned, but it will signal to the Magistrates Court and the Children's Court that Parliament regards the offence as needing to be treated more seriously. It has been asked whether there is any point to increasing fines, because most of these people will not be able to pay fines.

That was pretty obvious at the time the legislation was passed in 2004, but it did not seem to be an impediment to the government of that day. The point is that that is not unusual. Many offences under the Criminal Code and other legislation have fines as an alternative to imprisonment, and if that fine cannot be paid, it is dealt with under the relevant enforcement legislation by way of either days in custody in cutting out the fine in extreme cases, or by some other disposition in lieu of a fine. That argument does not take us very far.

I refer now to the impact on businesses. I have already mentioned that programs will be put in place by the Office of Crime Prevention to educate businesses as to what is required. Businesses, even now, have self-imposed limits on what they sell and to whom they sell things. I will again refer to the Butcher Shop. The Butcher Shop, as I have said, appears to be an arts supply store. It sells materials that are also graffiti related. However, I have no reason to suppose that it knowingly supports graffiti vandals. In fact, if one looks at its website, although it does also advertise the relevant laws that cover graffiti damage and it provides hotlines to Legal Aid WA and the like, and although it does appear to oppose this legislation, although I would suggest that is for misconceived reasons and it exaggerates the effect of the legislation, limiting to whom it sells its articles will not apparently cause it any great difficulty. I say that with reference to its website. In due course, if it is necessary, I can have a copy of the shop's policy printed out and tabled. I am looking at the graffiti shop's store policy on its website, which states —

Hon Ken Travers: Graffiti shop or Butcher Shop?

Hon MICHAEL MISCHIN: The Butcher Shop; I am sorry.

Hon Ken Travers: That was a Freudian slip!

Hon MICHAEL MISCHIN: I have graffiti on the brain now; I have been scarred by it.

The Butcher Shop's store policy states —

The Butcher Shop adheres to all laws regarding the sale of aerosol paint. All paints are out of public reach, reducing the chance of theft for unlawful or harmful use.

That seems to meet the argument about what art retail businesses are going to do about this and how they will cope. This mob seems to have coped. It has a store policy on it. It seems to be able to enforce it, according to what it says. The policy also states —

In the state of Western Australia it is not illegal to sell aerosol paint to people under 18 years of age.

That will change shortly. It continues —

Stores selling aerosol paints implement a variety of voluntary codes of practice to reduce the instance where their products are used for illegal graffiti purposes. Most retailers implement a blanket 18+ rule and ID may be required to purchase paint.

This is from one of the opponents to this bill. It has a website where people can access pages showing that it opposes the bill. The Butcher Shop seems to be setting its own store policy, which is not unlike what the government has proposed. Indeed, it is complementary to it. It goes on to state —

The Butcher Shop does not discriminate on the basis of age, gender, race or appearance but rather employs a system that avoids supplying paint to anyone, whether under or over 18 years of age, where staff reasonably suspect the products will be used unlawfully.

Where it is suspected that an individual may use, or supply someone who may use a product containing solvents to become intoxicated, they will be refused sale.

The Butcher Shop has a self-imposed restriction. That does not seem to cause it any problems. The government is simply backing it up.

Hon Giz Watson: Or two years jail if you do not do it; it is a big difference.

Hon MICHAEL MISCHIN: The Butcher Shop has its own more stringent policy, the way it tells it. If it has any doubt about someone using an implement for an unlawful purpose, it will not sell it even to people aged over 18. I hope that the shop continues to have that attitude. Its policy states that some shops require someone under the age of 18 to produce ID. The shop is at least aware that some retailers do that and that it is entirely appropriate to do that. It will be necessary for the shop to do that if it wants to avoid prosecution. It is hardly a great impediment on the shop. The policy goes on to state —

It is important that our customers are aware of their rights and responsibilities when carrying things like aerosol paints and markers, and also the consequences of practising illegal graffiti.

The various laws on the subject are mentioned and reproduced.

I will deal with some of the specific arguments. I will not dwell on them and just because I do not deal with them all does not mean that either the government or I accept that there is any merit to them. I have already touched on the subject of the sorts of things that are included within the scope of the bill, and perhaps it is worth reminding members of that. All the bill is doing is increasing the penalty to two years and the fine to \$24 000. That, if one bothers to look, is not inconsistent with—it is significantly less than—some of the penalties in the other states. Of course, there is no impediment to someone being charged under section 444 of the Criminal Code, which would carry a penalty of 10 years' imprisonment.

The new offence in proposed section 216 is limited to cans of spray paint or pens, marker pens or similar implements that have a tip over six millimetres wide and contains a fluid that is not water soluble and is capable of marking a surface. Crayons, lipsticks, pencils and most of the COPIC markers that seem to have caused concern to artists will not fall within that provision because the tips are not more than six millimetres wide. If one bothers to measure a highlighter pen, one will see that it is only five millimetres wide. There is not much in it but it is one of those cases when size does matter.

I have already mentioned that the impact upon artists will be non-existent if they are over 18 years of age and that there is no bar to the use of items by people aged under 18; it is simply illegal for someone to sell items to someone who is under 18. I have been asked about the responsibility of shop owners. That is no different from the current situation whereby shopkeepers cannot sell alcohol or other prohibited articles to juveniles. I should mention the defence that has been raised and the amendment that is on the supplementary notice paper. The government does not support the amendment for several reasons. Firstly, the terminology is not sufficiently precise. If I understand it correctly, we are talking about an exemption for designated work requirements or for a recognised and structured educational activity. That is too vague to be workable. Secondly, it would not prevent a defence simply on the basis that the vendor says that a juvenile came into the store and told the vendor that he needed it for his work or for an art class, and the vendor believed it and sold the implement to him. That would be unworkable and would undermine the purpose of the legislation. I will deal with any other matter that needs to be specifically addressed during the committee stage.

Question put and passed.

Bill read a second time.

As to Committee Stage

On motion without notice by **Hon Norman Moore (Leader of the House)**, resolved —

That the committee stage be made an order of the day for a later stage of the sitting.

[See page 7773.]