

CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009

Third Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [5.50 pm]: I move —

That the bill be now read a third time.

HON KEN TRAVERS (North Metropolitan) [5.50 pm]: During the committee stage of the Criminal Code Amendment (Graffiti) Bill a number of questions were asked of the parliamentary secretary. I am a little disappointed because I had hoped that he might come back into the house and give us some of the answers that we encouraged him to provide during the committee stage last night. I hope that he will provide those answers before the third reading of the bill is put to the vote, so that members can be fully aware of all the facts before the bill is finally passed and becomes legislation.

Nonetheless, the questions that we must now ask are: what is the state of the bill as it has come out of the committee stage and does the house still wish to pass that legislation? A number of issues were raised during the committee stage. Although it may not be a ground on which to defeat the bill, questions were certainly asked about whether the policy of the bill as was outlined in the second reading speech will be achieved by the provisions in the legislation and whether they are adequate to deal with the issues that I believe all members of this house wanted them to deal with when the second reading of the bill was agreed to a couple of weeks ago.

I think it is clear that the provisions of clause 4 are lacking in the way in which they will deal with people under the age of 18 years. It became demonstrably clear to all members last night that this legislation will not have any meaningful impact in preventing people under the age of 18 from accessing graffiti implements. During the second reading and committee stages, the parliamentary secretary was asked about the provisions in the South Australian legislation for controlling graffiti. Although the parliamentary secretary did not care to do any research on the situation in South Australia, I did and I very quickly this morning found a copy of the legislation that was referred to—that is, the South Australian Graffiti Control Act 2001. Interestingly, it seemed during the debate at the committee stage that that legislation had only recently been passed, but the only legislation that I could identify from South Australia was passed in 2001. The South Australian act is far more substantial than the legislation that we are dealing with today. The South Australian act deals with the key policy issue of preventing people under the age of 18 from accessing graffiti implements in a far more comprehensive manner than does the bill that has come out of the committee stage. We now have a piece of legislation that is nothing but a sham. It will not prevent people under the age of 18 from accessing graffiti implements.

I suspect that some of my colleagues will make further points in their third reading contributions, particularly about some of the issues which were dealt with during the committee stage but which I believe were unsatisfactorily responded to by the government.

Hon Norman Moore: The chamber has made a decision on those particular matters. It debated every clause and you were here and voted for them all. The chamber has made a decision. Whether or not you like it is bad luck. Plenty of bills were passed through this house that I did not like either.

Hon KEN TRAVERS: Thank you for that advice, Mr Moore. I was aware of that. As you would know, Mr Moore, we are now on to the third reading debate.

Hon Norman Moore: And you are retreading the committee stage; that is what you're doing.

Hon KEN TRAVERS: No, I am not. I am going through the third reading debate —

Hon Norman Moore: And after you've done that, you'll retread the second reading, I guess; and, if you could get your own way, probably the first reading.

The PRESIDENT: I have been listening very carefully to the member's comments. The member will be aware that the third reading is a very narrow debate about why the bill should or should not be read a third time. The member cannot retrace the steps of the debate during the second reading or committee stages, because the chamber has considered those matters and has made its determination. Any comments that are made in addition to that need to specifically relate to why the bill should or should not be read a third time.

Hon KEN TRAVERS: Thank you Mr President; I appreciate your guidance on those matters. Certainly, it is my intention to demonstrate during the third reading debate why the bill as it has come out of the committee stage should or should not be read a third time. I understand that this is a very narrow debate. Before we make the decision whether the bill will be read a third time, it is important for the house to acknowledge and understand exactly what the bill seeks to achieve. I do not intend to, and I am not suggesting that we should, re-canvass the policy of the bill. There is almost unanimous agreement within the chamber on the policy of the bill, but I believe it is important that we understand whether this bill, as it has been agreed to by the Committee of the

Whole, will be good legislation that achieves the policy implications as were agreed to in the second reading debate.

Hon Simon O'Brien: It is exactly the same as what you agreed to in the second reading debate. Are you voting against it now?

Hon KEN TRAVERS: No.

Hon Simon O'Brien: Then you're a phoney and a fraud in what you're saying and so are all your colleagues!

Hon KEN TRAVERS: Hon Simon O'Brien would probably know more about phoneys and frauds than anyone else in this chamber.

Hon Simon O'Brien: Yes, because I've sat here and stared at them for 12 years!

The PRESIDENT: Order!

Hon KEN TRAVERS: Hon Simon O'Brien has sat next to them for 12 years; he has not stared at them for 12 years, although I have occasionally seen him do googly eyes at those who sit next to him.

Withdrawal of Remark

Hon ED DERMER: I am not at all sure that "fraud" is appropriate language to be used in this chamber. I would like your advice on that, Mr President. I think that Hon Simon O'Brien should withdraw that very inappropriate comment.

Hon SIMON O'BRIEN: The standing order is quite clear that if any member takes objection to any expression that is used, it shall be withdrawn. Accordingly, I withdraw.

The PRESIDENT: I do not have to make a decision.

Debate Resumed

Hon KEN TRAVERS: I was going to say, Mr President, that I certainly hope that that is not the new interpretation of the standing order, which refers to unparliamentary language; otherwise, we could end up with members taking points of order —

Hon Simon O'Brien: That is the standing order. You ought to look them up. You might also learn something about what the third reading debate is supposed to be about.

Hon KEN TRAVERS: I am amazed. I do not know that we want to get into a debate now, but I know that the Standing Committee on Procedure and Privileges will be keen to look at the standing orders of this house and to make sure that it clarifies in plain, simple English for members of the house the rules on the withdrawal of comments. I am not sure that it is quite that literal; it needs to be unparliamentary language.

Sitting suspended from 6.00 to 7.30 pm

Hon KEN TRAVERS: Before the dinner break I was providing the house with a summary of the opposition's view on the Criminal Code Amendment (Graffiti) Bill 2009 as it has emerged from the committee stage, and was questioning whether we could be passing a better bill if some of the suggestions that we put during the committee stage had been taken up by the government. One thing we very quickly discovered in this place is that there is probably not much point in moving amendments. However, the opposition will continue to put forward suggestions on how to improve legislation. If the government is not prepared to take note of our suggestions, so be it. It is clear that the government will exercise its numbers. Therefore, it is a case of the opposition continuing to put forward suggestions for amendments to legislation in the vain hope that the government will adopt some of its suggestions. The result would be better legislation. That was the procedure followed by this house for some considerable time prior to the last election.

This bill could have been improved in a number of areas that would have obviated the need for the opposition to, in this third reading debate, raise issues that would have achieved the aims that were agreed to in the second reading stage. I refer to limiting the supply of these implements to juveniles to, hopefully, more accurately and effectively reduce the incidence of graffiti.

I was informing the house that although the parliamentary secretary was unwilling to get a copy of the South Australian Graffiti Control Act 2001 to substantiate his comments, I was very quickly able to get a copy of it. If we had adopted a number of the measures contained in that legislation, this bill would have been better legislation.

I said before the dinner break that one of those measures—I am sure some of my colleagues will talk about it in more detail—would have been to require a sign to be prominently displayed in premises from which cans of spray paint are sold indicating that it is unlawful to sell cans of spray paint to persons under the age of 18 years.

In addition, the sign should indicate that persons may be required to produce evidence of age when purchasing cans of spray paint. An amendment along those lines would have substantially improved this bill. It also would have dealt with some of the concerns that members on this side of the house have about a shop assistant working in those outlets not knowing what his or her requirements are. As the bill is currently framed, many people will not have any idea of their responsibilities.

The South Australian legislation also includes provisions for the appointment of authorised persons, and that is enforced by local government. That state's legislation requires that cans of spray paint in a retail outlet must be secured. It includes a similar provision to our legislation about selling spray paint to minors, as well as some requirements for providing proof of age. The South Australian legislation also contains a range of offences to do with the marking of graffiti. That is, again, a matter that I do not think is adequately addressed in the bill that we will be completing tonight.

Another provision in the South Australian legislation is that a person who carries a graffiti implement with the intention of using it to mark graffiti, or who carries a graffiti implement of a prescribed class without lawful excuse in a public place, or in a place in which the person is trespassing or which the person has entered without invitation, is guilty of an offence. A number of the concerns were raised by members during the committee stage. One of those concerns is that the bureaucratic process that will effectively be set up under this bill will not prevent people under the age of 18 from gaining access to graffiti implements. All that these young people will need to do is find an 18-year-old who is willing to buy these implements for them and pass them on to them. If a provision along these lines had been included in the bill, it would have helped to resolve that concern, because it would have put in place a mechanism to ensure that a person who passes a graffiti implement to another person for the purpose of committing graffiti is guilty of an offence. That would have been a far better situation.

The very limited measures that are contained in this bill are so poorly drafted that people will be able to drive a truck through them. Having listened to the debate yesterday, it is clear to me that a voluntary code of conduct such as the one to which the parliamentary secretary referred—the one that has been implemented by The Butcher Shop in Northbridge—would be a far more effective mechanism to control the supply of graffiti implements, not only to juveniles under the age of 18, but also to people over the age of 18 who are likely to use those implements for unlawful purposes, which I think is the criterion that the parliamentary secretary advised us of. A provision along the lines of that voluntary code of conduct would be far more productive than the very limited measures that are contained in this legislation that we are being asked to support tonight.

Unfortunately, we have received no advice or evidence from the parliamentary secretary about the basis for this legislation and about the government's expectations about how this legislation will achieve its aims. The parliamentary secretary did not provide that information to us at the commencement of the third reading debate. Perhaps it is the intention of the parliamentary secretary to provide that information to us in his summation of the third reading debate. This is a sad day for this Parliament. We are being asked to finalise this piece of legislation, yet that important information about this legislation has not been given to the Parliament, and it has not been given, through the Parliament, to the people of Western Australia. The Parliament and the people of Western Australia have not been given important information that will enable us to understand what research and analysis has been carried out by the government to ensure the aim of this legislation, with which we all agree—namely, to reduce the incidence of graffiti—will be achieved.

It is a sad indictment of this government that the response that was given by the parliamentary secretary to this house was, "I was not involved." Of course the parliamentary secretary would not have been involved. That is why parliamentary secretaries are given briefings. They are given briefings so that they are aware of the legislation that they are dealing with. They can then come into this house, as the representative of the minister, and put all those matters before the house so that when we make the final decision about whether we will vote for a piece of legislation, we are fully informed about what we are doing. Unfortunately, we will not be in that position tonight. We will be asked to vote for the third reading of this legislation without having any understanding of key criteria. We will be asked to pass legislation that is manifestly inadequate in its capacity to achieve the policy aims and objectives outlined to us at the commencement of debate. Again, I think that is a very sad indictment of the government. It shows we have a government that is prepared to bring to the house sloppily prepared, inadequate legislation and then refuse to engage in debate during the committee stage on the development of amendments to improve the legislation. We have a government that is prepared to just ram legislation through Parliament by using its numbers in this place. This legislation is a sham, and it will mislead the people of Western Australia into a false sense of security.

Hon Michael Mischin: We used your numbers!

Hon KEN TRAVERS: The opposition will support this legislation.

Several members interjected.

The DEPUTY PRESIDENT (Hon Jon Ford): Order, members.

Hon KEN TRAVERS: As I was about to say to members, the opposition will support this legislation because it is what we have before us tonight. This is the legislation that has come out of the committee stage of the passage of this bill. We are left with a decision; we support the principle and the policy of the bill. We engaged in a productive debate with the government during the committee stage to try to improve the legislation. We were not able to do that; we were not successful. Hon Giz Watson unsuccessfully moved amendments that were designed to make the bill reflect more accurately the government's policy in the lead-up to the last election. We are now left with only one piece of legislation to deal with, and that is the legislation before us, which was adopted by the Committee of the Whole House. We have to decide whether to vote for it or against it. Do we vote for inadequate legislation that may do something, or do we reject it? The difficulty is that if we reject it, the very meagre benefits of the legislation, if any, will be lost. We have wasted time putting this legislation through when we could have been producing wonderful legislation that would have gone a lot further towards achieving the policy aims and objectives that the house agreed to at the commencement of this debate. However, we cannot do that because we are now left to make a decision on the legislation before us.

The opposition will support the legislation on that basis, just as we supported the bill during the second reading debate, because we oppose graffiti and we want to do something about it. It is a shame that the government was not prepared to do the hard work of writing proper, decent legislation and presenting it to the Parliament. Instead it brought inadequate and lazy legislation to Parliament and refused during the committee stage to allow the opposition to improve it for the people of Western Australia. We are left with that dilemma. I do not wish to re-canvass earlier debates about whether this legislation will do anything, but we may as well pass it because at least it will not do any harm. However, I doubt whether it will achieve anything either. The government is using very poorly drafted legislation to try to spin a view to the community that it is doing something. However, it has been demonstrated during this debate that the government is not doing anything other than bringing legislation to the Parliament that has more holes in it than a sieve. We could use this legislation to drain the beans after they have been boiled in the pot! That is the nature of this legislation—there are holes all the way through it. The government is not interested. It just wants to use its spin to say, "We put a bill through the other day to ban graffiti!" Yet it will probably achieve nothing. The option for the house tonight is to reject or accept the bill. Unfortunately we only have the option of the legislation as it has come out of the committee stage. We will be supporting the legislation but it is a shame that the government is not prepared to use this chamber, as governments in the past have used this chamber, to seek to improve legislation and to seek to gain the views of the broad community and not just use brute numbers, as this government is showing on a daily basis its willingness and desire to do.

I will support the legislation but I am very disappointed that we will not achieve any of the policy objectives. I am more than happy to provide the parliamentary secretary with a copy of the South Australian legislation so he can go away and study it as part of his homework. Unfortunately, the government is not going to meet its policy objectives in this bill. Maybe the parliamentary secretary can look at the South Australian legislation and take up some of the measures. He can then come back to this house in the future and bring in the legislation that should have been brought in in the first place or, at the very least, should have been amended during the committee stage to reflect and pick up some of those issues. There are many measures out of the South Australian legislation that we could talk about. If the parliamentary secretary wants a copy, he can come and see me and I will give him a copy of it after this debate. I will leave the opportunity now because I think some of my colleagues wish to speak. They will be far more eloquent in putting forward arguments about the state of this legislation as it has come out of the committee stage and some of the areas in which it could have been improved to not only ensure we reduce graffiti but to protect innocent people out there doing the right thing; innocent people working in the shops and the like to ensure that we are able to defeat the scourge of graffiti in Western Australia.

As an opposition member I think I have adequately explained to the house why I will be supporting this legislation tonight.

Debate adjourned, on motion by **Hon Norman Moore (Leader of the House)**.