GRAFFITI VANDALISM BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 14: Terms used —

Debate was interrupted after the clause had been partly considered.

Mr P.C. TINLEY: I will just pick up from where we left off. I want to get a clear definition of "a privately owned place that is unoccupied". If graffiti appears on a zero setback parapet wall, the building owner is one thing, but if the graffiti is visual from a vacant lot, can the minister clarify who gives permission for authorised graffiti in that circumstance? Who owns the visual wall?

Mrs L.M. HARVEY: These provisions are not linked to the commission of the offence. These provisions are linked to the local government powers and the ability to enter property to remove graffiti or to order a property owner to remove graffiti that is unsightly or offensive that may have been applied with the owner's consent. It is not linked to the commission of the offence; it is linked to the ability of the local government to enter a public place for it by virtue of the definition to exercise its powers of removal.

Mr P.C. TINLEY: I note the minister's point that these clauses are not about the commission of the offence; however, there is a longstanding tradition and convention of property rights at law for all statutes, pretty much, directly or indirectly. If I understand the minister's response correctly, this provision is not about the commissioning of an offence, it is about the remedial action that a local authority might take to remove graffiti. In determining that, the local authority would have to determine, under the guidelines that I would imagine may come from local authorities, whether the graffiti was consensual. In trying to work out whether there was consent for the graffiti, who do local authorities ask? Is it the owner of the building whose parapet wall is on a zero setback or the owner of the vacant land? It is very important to understand who has that property right.

Mrs L.M. HARVEY: It would be the owner of the building wall.

Mr P.C. TINLEY: At its core, this entire bill refers to visual ownership of public space. What members of the public see is very important and material to the bill, because at some point there is a subjective decision about the nature of the graffiti and whether it is vandalism. I am not suggesting that a person has been caught; I am talking about the removal of the item. Surely, with vacant land there are other matters. For the owner of the vacant land to paint the wall, it is my understanding of property law that they do not need the permission of the building owner to do so, because there is a right and opportunity for them to decorate their own property.

Mrs L.M. HARVEY: I draw the member's attention to clause 18, which outlines that a local government can give notice requiring the removal of graffiti. The clause states —

> (1) This section applies to graffiti that is —
>
> (a) applied to property with the consent of the owner or occupier; and
>
> (b) visible from a public place; and
>
> (c) considered by the local government to be unsightly or offensive.

The member might remember the case of the Stormie Mills artwork in the City of Vincent. The local government sought the permission of a vacant lot owner to paint over a commissioned piece of art by Stormie Mills that had been placed with the permission of the owner on the wall. This provision defines a public place for the purposes of the various clauses in the notice and outlines the procedures for local governments to follow to give notice to the relevant occupier of a lot or the owner of a lot, for example, or to give a notice of removal to the owner of a lot if it has deemed that the work is unsightly or offensive.

Mr W.J. JOHNSTON: I want to ask a question about the extent of the definition of a public place. Clause 14 states —

> ***public place*** means —
>
> (a) any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise …

Would that include the inside of a building?

Mrs L.M. HARVEY: Potentially, if it is visible from a public place.

Mr W.J. JOHNSTON: That is unusual. We are talking about the definition of a public place. The minister said it depends "if it is visible from a public place", but what is a public place? That is what we are discussing. We

are not discussing whether it is visible from a public place; we are discussing what a public place is. I will read the definition again —

> (a) any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise …

It seems to me that those words include the inside of a building, and that is what I seek to have clarified. It cannot possibly be whether it is seen from a public place, because we are discussing what a public place is. If a member of the public or any section of the public is permitted to access a place, whether or not they have to pay to get there, that place is a public place. I am not talking about whether it is visible from a public place; I am talking about that definition of a public place. I ask a very, very simple question: does that include the inside of a building?

Mrs L.M. HARVEY: Yes, it could because the definition of a public place means any place to which the public or a section of the public have or are permitted to have access.

Mr W.J. JOHNSTON: That would also include a private home, because a section of the public would be permitted to enter that home, because they are a section of the public. They might be defined as that section of the public that is related to the occupier of the house, so that is a section of the public that is permitted to enter the building, because the provision does not exclude private residences—I know there is a bit below at paragraph (c), but I am talking about paragraph (a). As the minister said, we are talking about the authorisation that would be given to local governments to take action. We know that a public place is a building and the minister has agreed that this definition includes the inside of a building; we are now just trying to work out what "any section of the public" means. A section of the public must include families, family members and friends because they are naturally part of the public, because that is what "the public" means. Does the definition at paragraph (a) include private residences?

Mrs L.M. HARVEY: No, member, I think you need to take another look at the definition; it states —

> … the public, have or are permitted to have access whether on payment or otherwise …

It is about a place that the general public has access to and does not encompass dwellings.

Mr W.J. JOHNSTON: The minister said "the general public", but the words "general public" do not appear in the provision that I have drawn her attention to. Could the minister find the words "general public" in the provision; perhaps I have missed them? Perhaps that is the first thing to do. Could the minister draw my attention to the words "general public" in this provision, because I can see only the words "public" and "section of the public"? I cannot see the words "general public". We are dealing with the definition of a public place in clause 14. If the minister could draw my attention to where the word "general" is used in respect of general public, that would be of great assistance, then I will ask further questions about the term "section of the public".

Mrs L.M. HARVEY: I am advised that this is defined as "the public", and it does not refer to individuals being permitted access to a place, which is more consistent with the description of a dwelling.

Mr W.J. JOHNSTON: I am not asking for the definition of a dwelling. I am not interested in that; that is unrelated to the question that I have asked the minister. The minister used the term "general public", and that is what I asked her a question about. I told the minister that once she had told me where the words "general public" apply, I would ask some further questions. The minister said "the general public"—where is that from?

Mrs L.M. HARVEY: Member, the word "general" was my descriptor for the widely held belief of what "public" means; as in, people who are in a public place. Those two words do not appear connected in this definition; it was my way of describing what the public is. As I said, I think the definition is quite succinct—"public place" means any place to which the public or any section of the public has or is permitted to have access to, whether on payment or otherwise.

Mr W.J. JOHNSTON: Okay, so we got rid of the word "general". That is excellent; I am glad we have got rid of irrelevancies and we are just talking about the words that are actually in the legislation that we are dealing with. I thank the minister for that. It was a little confusing for the minister to raise a word that was not part of the provision, but we have clarified that now. I refer to the word "section". The legislation states "any section of the public". It does not refer to individuals, because, in fact, an individual is a section of the public; that is simply a fact. The minister says "any section of the public", and as she says, this is about the rights of the council, and we will get to their rights later. The minister referred to a previous debate about that legislation and I remind her to look at the arguments put at the time about the question. For example, there is a debate on that legislation about a council objecting to words with political content such as "XYZ Council are a pack of mugs" being put on a house, and the council taking objection to that. We had a big debate on that. Now, as the minister says, the powers of the council are being extended and there is reference to "any section of the public"—not a defined section, not a particular section, not a section that will be dealt with through regulation, but any section of the

public. If any section of the public is able to go into that place and it is a building, these provisions will apply. As I told the minister, I am getting to the words being used here—that is, "any section of the public". The minister said to me that the term "any section of the public" does not include a specific individual. Could the minister just explain, with reference to words in the bill, not by reference to anything else, why an individual is not any section of the public?

Mrs L.M. HARVEY: "Any section of the public" refers to a subset of the public, which is ordinary people generally in the community. The member implied that the powers of local government are being extended; they are not. These are the existing powers that local governments currently have and those provisions are being taken from the Local Government Act and inserted into the Graffiti Vandalism Bill. I said in my second reading speech that this legislation was a consolidation of all the graffiti vandalism offences across a number of different statutes; they have been pulled together into one bill. This legislation does not extend the powers that local government currently has to enter any place to remove graffiti; the existing powers have just been pulled into this legislation to make the stand-alone Graffiti Vandalism Bill.

Mr W.J. JOHNSTON: Has the minister just confirmed that any individual is included in the term "any section of the public"? Does the term "any section of the public" include an individual? I do not remember the minister's exact words. It is being said that the term "any section of the public" includes a particular individual in Western Australia.

Mrs L.M. HARVEY: No, the intention is that it is to be a grouping or a subgrouping of a section of the public made up of ordinary people in general in the community.

Mr W.J. JOHNSTON: Okay, as the minister said, it refers to "ordinary people"; I could not remember the term the minister used. "Any section of the public" is made up of ordinary people, but that could mean one ordinary person.

Mrs L.M. HARVEY: Potentially, but this is about defining a public place for the purposes of the clauses that come after this one.

Mr W.J. JOHNSTON: Yes, that is right; that is the whole point here. As the minister says, this provision includes any individual person, so we now know that any place in the state is a public place if anybody can go into it, whether or not they pay, and it includes buildings. Houses are buildings, so it includes private houses. Can the minister now confirm that?

Mrs L.M. HARVEY: No, it does not include private houses.

Mr W.J. JOHNSTON: What are the words the minister can draw my attention to in paragraph (a) under "public place" that exclude a private residence from the definition? We know the definition includes buildings and we know that any individual is a section of the public, and if they are permitted to have access to a building, why is a house not drawn into that provision? What are the words in paragraph (a) that exclude a private home from that provision?

Mrs L.M. HARVEY: If a dwelling—a house—was situated in such a way that the front door was open and there was free access to ordinary people generally in the community, rather than permitted access by, for instance, the occupiers of that home or people invited to the home as is ordinarily the case with a dwelling, that place could be construed to be a public place under this definition. For example, if for some bizarre reason a homeowner opened up their doors and had a sign up saying "Open to the public" and somebody walked through that door, that place would then be a public place for the purpose of this definition. However, if the powers of local government were to be extended to permit entry into a residential dwelling, "residential dwelling" would have been defined in the terms used.

Mr W.J. JOHNSTON: I have now been here for seven years, minister, but that was one of the most stupid things I have ever heard. I am sorry to tell the minister that. The minister has already agreed that "any section of the public" includes an individual. There is nothing in the legislation that states a place has to have a sign up for it to be open to any section of the public. It does not say that; that is the problem. That is why I keep saying to the minister not to tell me what she wants the definition to mean, but to tell me what it does mean. What is the provision, here in these words, that excludes a private residence? It is not a question of whether the public can see it, because a public place is actually being defined. This is not about whether something can be seen from a public place. A public place is being defined. "Public place" means any place to which the public or any section of the public has, or is permitted to have, access, whether on payment or otherwise. Let me make this clear: the minister has agreed that "any place" includes a building, and she has agreed that "any section of the public" includes an individual. Clearly, an individual is permitted by definition to enter their own house—their own dwelling—so they are permitted to have access to the place. Whether they are paying or not is irrelevant; they are permitted to have access. We agree it is a building—if it walks like a duck and quacks like a duck, it is a duck. Let us a look at the definition of a "house". A house is a building; the words in the bill are "any place", so

that includes a building. "Any section of the public" includes the individual who owns the building. Are they permitted to have access? Of course they are permitted to have access; it is their house. That means that their house is included as a public place in this definition. If that is not what the minister intended, I accept that, but do not rely on something other than the words in the legislation. Can the minister tell me what the words in paragraph (a) under "public place" are that make it clear that a private residence is not included?

Mrs L.M. HARVEY: I think the member should read paragraph (a) in context. A public place means "any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise". I think that is quite clear, but clearly the member disagrees.

Mr W.J. JOHNSTON: The problem is that I do not actually care what the minister thinks; that is not what we are debating here. With all due respect, I imagine the minister does not care what I think either, but that is for other people to worry about. What we are worried about are the words on the paper. Why not include a provision that says "or otherwise, except a private residence; or", because that would fix it up? I will give the minister an example. What about the foyer of an apartment block? Does the minister see the issue? Of course we want to have this legislation cover the foyer of an apartment block, because we would not want some hoon to come in—although I understand that there are no hoons in Western Australia, because if we ask the minister for statistics on hoon driving, we are told that there are no hoon drivers. That is an interesting issue, but let us use the word "hoon". Say a young hoon runs in and sprays graffiti on the wall of the apartment foyer; clearly we want to be able to deal with that issue. The minister says, "That is part of a private residence, but we want to have access", so what is it in the words that appear in paragraph (a) that makes it clear that a private residence is not part of a public place? The minister cannot tell me it is because it cannot be seen from a public place, because that is circular. We are defining what a public place is. The minister has already told me that a public place is a building and that any section of the public includes an individual. We have already agreed that if they are permitted to have access, they are covered by the definition. We all know that we are permitted to enter our own house; that is pretty damn obvious. What is it that says, in these words—not as the minister's wish or intention—that a private residence is not included?

Mrs L.M. HARVEY: If the member has a look at all the definitions of "public place", any place —

Mr W.J. Johnston interjected.

Mrs L.M. HARVEY: Sorry, can I answer? That part of clause 14 reads —

> (a) any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise; or
>
> (b) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access; or
>
> (c) a privately owned place that is unoccupied or is occupied by a person who is not the owner and does not have the authority of the owner.

A privately owned place is specified, if we want "public place" in a particular context. "Public place" has been clearly defined under paragraphs (a) and (b) and (c), taken in context. We will have to agree to disagree; I do not believe that paragraph (a), as it exists, gives local government power to enter a private dwelling.

Mr W.J. JOHNSTON: The minister said "and, and, and", and of course that is not true; it is "or, or, or". That is the point. We are talking about three separate definitions, we are not talking about one definition. If it was "and, and, and", it would be a single definition, but we are talking about "or". These are three separate definitions of what "public place" is. Paragraph (c) refers to a privately owned place that is unoccupied or is occupied by a person who is not the owner and does not have the authority of the owner. Okay; my house in Vic Park is not covered by (c)—or I hope it is not, because it would only be covered by (c) if somebody had broken into it, and having been broken into a number of times, I do not want them to do that again! In respect of paragraph (b), my house is not a school or a university or other place of education, so my house is clearly not defined by (b). Then I look at (a); remember, we are not looking at one definition, we are looking at three definitions that make up "public place", which is why the minister has brought this legislation to us with the word "or" after each paragraph. If the minister wanted it to be a single definition, it would have been "and, and, and". Under paragraph (a) "public place" means —

> any place to which the public, —

And if the minister had finished there, it would have been interesting, but that is not where it finishes —

> or any section of the public, have or are permitted to have access whether on payment or otherwise;

The minister agrees that the inside of a building is a public place. She agrees that I, my wife and my family are a section of the public; and she agrees that they have permission to enter my house, so they are permitted to have access. I can let the minister know that they are not paying to get in there—I wish they were, but they are not!—

so my house meets that definition. Unless the minister can tell me why it is that my house does not meet the three criteria that are set out in paragraph (a), she is wrong and her opinion is sadly wrong. It is not about disagreeing, and this is the problem: there are actually truths. Words have meanings, and it is not a question of interpretation, it is a question of the words, and these words include a private residence unless the minister can specifically show me where in the words that appear on this paper it is shown that my house is not included. I will go through that definition again: my house is a place; my house is accessible to a section of the public, that being my family; and my family are permitted to have access to that house without payment. All three of those criteria have been met, which makes my house a public place in accordance with this definition.

Mrs L.M. HARVEY: This definition comes from the Criminal Code. The exact term "public place" includes this definition under part 1, section 1, "Terms used". We have taken that definition, which reads, in part —

> The term ***public place*** includes —
>
> (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise; and
>
> (b) a privately owned place to which the public has access
>
> …
>
> (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access;

Interestingly, under the Criminal Code, the definition of "dwelling" reads —

> The term ***dwelling*** means any building, structure, tent, vehicle or vessel, or part of any building, structure, tent, vehicle or vessel, that is ordinarily used for human habitation, and it is immaterial that it is from time to time uninhabited;

We have taken the definition of "public place" from the Criminal Code for the sake of consistency.

Mr W.J. JOHNSTON: Actually, the words the minister read out are different from the words in this legislation, but we will leave that aside for one moment. Firstly, she used the word "and" and not "or", and she also defined what a dwelling is. Clearly, a dwelling and a public place are different things, otherwise we would not be defining them. If the minister wants to include a definition of "dwelling", that is cool; I am happy to do that. That is the point I am making.

Mrs L.M. Harvey: It's not required.

Mr W.J. JOHNSTON: It is required. That is the problem: the minister does not get this, and I understand that her background does not give her the benefit of having had years of experience in these things, and neither does mine. I am indebted to people like the member for Armadale and the member for Girrawheen who have such extensive experience in this; particularly the member for Girrawheen, who had a lifetime of experience in fighting crime before she came into Parliament. Of course, Dr Tony Buti, the member for Armadale, is an exceptionally learned lawyer, and I have had the benefit of their advice on these things. Unfortunately, there is nobody on the Liberal side of the lower house of Parliament who has that sort of extensive experience. That is the point: if we want to define "dwelling", clearly a dwelling and a public place become separate things, but we are not defining dwelling; we are defining only "public place", and a public place at this time includes a dwelling. If the minister wants to change that, I would be very, very happy for her to change it, but that is what she will need to do.

Mrs L.M. HARVEY: I thank the member and I will take his condescending assessment of my qualifications to be in this place as a contribution to the debate. We are not referring to a member of the public here; we are talking about any place to which the public—ordinary people in the general community—or any section of ordinary people in the general community are permitted to have access. We are talking about groupings of people or the public, ordinary people in general in the community, who have or are permitted to have access, whether on payment or otherwise. We have not defined "dwelling" because it is not relevant, and when we consider the rest of the clauses, members will understand why we have defined "public place" in this context.

Ms M.M. QUIRK: I was not going to comment on this point, but I have just gone to the Criminal Code, and there is a material difference in the phrasing, which has been pointed out by the member for Cannington, and that is that the link between paragraphs (a), (b) and (c) is conjunctive, not disjunctive. In other words, the word "and" is used rather than the word "or". That makes a difference because if the word "and" was used, as in the Criminal Code, the wording in relation to private premises could be used to contextualise what is meant in paragraph (a) in the bill. However, because the word "or" is there, the paragraphs have to be read distinctly and on their own merits. This is a problem. I do not know how we would get around that. My suspicion is that paragraph (a) in the bill, for example, is worded the way it is in the Criminal Code as "any section of the public", so, for example, that would include a hotel, and a person under 18 years could not enter the premises. Just

because a class of persons is excluded does not mean it is not a public place. I understand what is probably meant there, but having the word "or" there and not properly defining "dwelling" has actually changed the definition of a public place as it occurs in the Criminal Code.

Mrs L.M. HARVEY: A public place is similarly described in the Prostitution Act.

Ms M.M. Quirk: In what act?

Mrs L.M. HARVEY: The Prostitution Act.

Ms M.M. Quirk: Would that still be in force, minister?

Mrs L.M. HARVEY: I am just referring to where the definition has come from. I disagree with the member, but if she wishes to move an amendment to this clause, we can consider that on its merits.

Mr W.J. JOHNSTON: Because we do not have the resources of government, perhaps the best way is for us to move a procedural resolution to delay further consideration of clause 14 until the conclusion of consideration in detail. In that way, we would allow the minister to use her considerable resources—there are 100 000 public sector employees in Western Australia—to ask the government to come back with a proper definition so that we can overcome the problem that we have identified here through the good work of the Parliament. This is exactly what Parliament's job is—to expose flaws in the drafting of legislation, with unintended consequences, when the bill that the minister brings is not actually the exact words. We do not blame the minister for that, because these can be very complex pieces of legislation. I hold no animus towards the minister for not having got these words right, because I imagine that if I were in her shoes, I may also have not got the words right. I think that probably the best thing for us to do is to allow the minister time to use some of those 100 000 public sector employees in Western Australia to fix this problem so that we do not have a definition of a public place that includes places that are clearly private and were never intended to be included in the definition. I for one do not believe that the minister's intention was to include private residences in this definition; it is just unfortunate that they are included. I suppose I have to sign a piece of paper to do this.

The ACTING SPEAKER (Ms J.M. Freeman): I am told that under standing order 180 you can just move that as a motion.

Mr W.J. JOHNSTON: I move —

> That consideration of clause 14 be postponed until the end of consideration in detail.

The ACTING SPEAKER: That motion is moved under standing order 180, which states —

> A clause, or a clause which has been amended, may be postponed.

The motion before us is that clause 14 be postponed until the end of consideration in detail.

Division

Question put and a division taken with the following result —

Ayes (17)

Ms L.L. Baker	Mr D.J. Kelly	Mr J.R. Quigley	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Mr M. McGowan	Ms R. Saffioti	
Ms J.M. Freeman	Ms S.F. McGurk	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley	

Noes (32)

Mr P. Abetz	Ms M.J. Davies	Mrs L.M. Harvey	Ms L. Mettam
Mr F.A. Alban	Mr J.H.D. Day	Mr C.D. Hatton	Mr P.T. Miles
Mr C.J. Barnett	Ms W.M. Duncan	Mr A.P. Jacob	Ms A.R. Mitchell
Mr I.C. Blayney	Ms E. Evangel	Dr G.G. Jacobs	Mr N.W. Morton
Mr I.M. Britza	Mr J.M. Francis	Mr S.K. L'Estrange	Mr J. Norberger
Mr G.M. Castrilli	Mrs G.J. Godfrey	Mr R.S. Love	Mr D.T. Redman
Mr V.A. Catania	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.H. Taylor
Mr M.J. Cowper	Dr K.D. Hames	Mr J.E. McGrath	Mr A. Krsticevic *(Teller)*

Pairs

Ms J. Farrer	Mr T.K. Waldron
Mrs M.H. Roberts	Dr M.D. Nahan
Mr B.S. Wyatt	Mr A.J. Simpson
Mr P. Papalia	Mr D.C. Nalder

Question thus negatived.

Dr A.D. BUTI: Paragraph (b) states —

> a school, university or other place of education, other than a part of it to which neither students nor the public usually have access

I assume the only difference between paragraph (b) and paragraphs (a) and (c) is that there is a possibility that part of it is quarantined from students or the public; is that correct? Is the difference between paragraph (b) and paragraphs (a) and (c) that, although it is open to the public, part of it might not be open to the public? Am I reading that right?

Mrs L.M. HARVEY: Yes; that is correct.

Dr A.D. BUTI: If that is the case, why would this paragraph be restricted to a school, university or other place of education? The member for Willagee has told me that sometimes parts of defence bases are open to the public and parts are not open to the public. Why does this clause identify only educational facilities and no other facilities that would also have the same condition of being restricted to the public?

Mrs L.M. HARVEY: My understanding is that a school, university or other place of education is not ordinarily considered a public place, because generally access to those places is restricted to students, lecturers and other people who have a right to be, or have business to conduct, at those educational institutions.

Dr A.D. BUTI: Having been an academic in a university for a number of years, I find that very strange, because anyone from the public can walk into a university. Most universities do not have any barriers. In the USA there are barriers, but at all universities in Western Australia—Edith Cowan University, Curtin University, the University of Western Australia and Murdoch University—people can just walk in, even into the libraries, so I find that to be a strange answer.

Mrs L.M. Harvey: That was a statement.

Dr A.D. Buti: You gave us an answer that is clearly wrong.

The ACTING SPEAKER: Sorry, member for Armadale, the minister did not stand up.

Dr A.D. Buti: She is not giving an answer.

The ACTING SPEAKER: She has not given an answer.

Ms M.M. QUIRK: The minister noted in an earlier answer that the reason the local government functions in relation to graffiti have been inserted in this legislation is that they have been removed from the Local Government Act. It is my understanding that they have not yet been removed from the Local Government Act, as it says in the explanatory memorandum, but that it is the minister's intention when clauses 41 and 42 are published that that will implement that deletion from the Local Government Act.

Mrs L.M. HARVEY: I am sorry if that was not clear to the member. What I said was that those provisions had been extracted from the Local Government Act.

Ms M.M. Quirk: They haven't yet; they won't until we get to clause 41.

Mrs L.M. HARVEY: Perhaps "extracted" is the wrong word. Perhaps "copied" from the Local Government Act and pulled into the proposed Graffiti Vandalism Act.

Ms M.M. QUIRK: I refer to the explanatory memorandum on that clause, because it is used as a secondary aid to interpretation. The explanatory memorandum states —

> This is necessary as the local government functions relating to graffiti have been removed from the *Local Government Act 1995* (see clauses 41 and 42) …

That has not yet occurred but will occur when clauses 41 and 42 are passed.

Mrs L.M. HARVEY: Clauses 40 and 41 remove the functions that currently occur in the Local Government Act, and they will be replicated in this Graffiti Vandalism Bill.

Dr A.D. BUTI: I return to paragraph (b) and the minister's answer. Although the minister's answer may have validity for a school, it is wrong when applied to a university. The minister should not be able to make

statements that are completely wrong. The general public is not prohibited from entering a university campus. That is clearly wrong. The public can go to most sections. Of course there would be certain sections that the public would not be able to go to, but overall the public is not barred from attending the campus of a university. I would like to know the rationale for not including other institutions that may have similar public access restrictions.

Ms M.M. QUIRK: This might save time. Minister, this clause deals generally with local government powers. I would be grateful, before we move to the next few clauses, if the minister could indicate the intention of the exercise of these powers, in particular where powers are circumscribed, and what she wants local government to do.

Mrs L.M. HARVEY: The existing powers of local government with respect to graffiti are to do with the ability of local government to obliterate graffiti that is visible from a public place, which is applied without the consent of the owner or occupier, even if the land is in a local government property, and it is an ability for local government to enter property to perform those functions. It is similarly represented at present in the Local Government Act.

Ms M.M. QUIRK: To go back to the line that the member for Cannington was pursuing, in that case entry to a private dwelling would not be permissible if no graffiti was visible from a public place.

Mrs L.M. HARVEY: That is correct. Local government is allowed to enter a privately owned property only with the consent of the owner, but there are provisions for local government to order the removal of unsightly or offensive graffiti from a private property—we will get to that as we move through—or to remove it and then bill that owner for noncompliance with a notice to remove unsightly graffiti or offensive graffiti.

Dr A.D. BUTI: I am actually incredibly disappointed by the minister's contemptuous behaviour towards my question and I will keep asking it until I get an answer. The minister's behaviour in question time, when she tried to silence me in advocating against domestic violence, was disgraceful. I will ask the minister again, and I would think she has a responsibility to answer my question. The minister said that the reason that universities are included in this clause and not other places that are non-educational is that the public is generally not allowed onto a campus. That is clearly wrong. So, can the minister please tell me what the rationale for including a university but not including, for instance, a defence base is?

Mrs L.M. HARVEY: A defence place, generally, the public would have no access to. Paragraph (b) states —

> a school, university or other place of education, other than a part of it to which neither students nor the public usually have access; or

We need to bear in mind that these definitions are linked to the right and the ability of local governments to order the removal of graffiti that is unsightly or offensive, or to go onto a property and remove graffiti that is unsightly or offensive through their graffiti management plans. There is not anything new in this. It is consistent with the existing provisions in the Local Government Act.

Dr A.D. BUTI: Previously, the minister answered that the rationale for including a school, university or other place of education, but maybe not a defence base, for instance, is because people cannot normally go to these institutions, and I pointed out to the minister that that is wrong with regard to universities. The minister is now saying that people are allowed to go into these places, and that is why they are different from a defence base. So, what is the answer? If the minister's original answer is the correct answer—namely, that these are included because the public is not normally allowed into these places—then the same would apply to a defence base. The minister just said that a defence place, generally, the public would have no access to. The minister said originally that that would be the same for universities. So, why is a defence base not included when a university is included?

Mrs L.M. HARVEY: As I said, we have defined "public place" in this way to enable local governments to continue with the good work they have been doing for the past 10 years in removing graffiti that is offensive or unsightly. That is what this is about. That is why "public place" has been defined as such. These laws have been operating now for 10 years. What we are doing with this legislation is importing these laws from the Local Government Act into the Graffiti Vandalism Act for the sake of simplicity.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Delegation by local government —

Dr A.D. BUTI: I am sure the minister can provide an answer to this question, and it is probably in the Local Government Act. Subclause (1) states in part that the "local government may delegate to its CEO". I presume there is some definition in the Local Government Act of what "local government" means. Does it

mean local government councillors, elected officials, officers or the mayor? Who is the "local government" that has the authority to delegate to the CEO?

Mrs L.M. HARVEY: It means a local government as established under the Local Government Act. These existing powers of delegation are consistent with sections 5.42 and 5.43 of the Local Government Act.

Dr A.D. Buti: But what does that mean? It is just a point of clarification; that is all.

Mrs L.M. HARVEY: "Local government" means a local government established under the act.

Dr A.D. Buti: But what does that mean? Does that mean councillors or the mayor? What is "local government"?

Mrs L.M. HARVEY: It would be the councillors making a decision to delegate this authority to the CEO. It must be done by an absolute majority, consistent with clause 16(3).

Clause put and passed.

Clause 17 put and passed.

Clause 18: Notice requiring removal of graffiti —

Dr A.D. BUTI: Subclause (1) states —

> This section applies to graffiti that is —
>
> (a) applied to property with the consent of the owner or occupier; and

I think it would have been advisable to include a definition of "occupier" in division 5. It then states —

> (b) visible from a public place; and
>
> (c) considered by the local government to be unsightly or offensive.

What is the determining factor; is it whether it damages or defaces a property, or whether the local government considers it unsightly or offensive? Also, in division 2 is the definition of "graffiti" different from what it is in division 5?

Mrs L.M. HARVEY: This is with respect to how a local government may order the removal of graffiti that it considers to be unsightly or offensive. The definition of "graffiti" remains the same. This should be viewed in conjunction with division 3, which deals with the powers of an affected person to appeal against an order or notice, and parties will then be able to put their case to the State Administrative Tribunal as to whether it is appropriate and reasonable for the local government to order the removal of the offending material.

Ms S.F. McGURK: I am sorry that I do not have a reference, but if I understand clause 18(1) correctly, it means that a person may consent to graffiti being on the outside of their house, for instance, but if the local council decides that that graffiti is offensive or unsightly, it can apply for an order for it to be removed. How does that accord with decisions that relate to political advertising? I think the Liberal Party contested a matter with the City of Armadale about whether people were allowed to put political advertising on their place of residence. In that case the City of Armadale tried to limit that advertising by, for instance, a curfew or a blackout during the election process, and the Liberal Party contested that and won. If someone decided not to have a placard but to spray-paint on their wall how fantastic their local member was in Fremantle, why would that be different from putting up a placard? Is not this provision contradictory to those other rulings to which I have referred?

Mrs L.M. HARVEY: Some of what the member is saying would fall under the local government by-laws around signage and the placing of advertising material. I know from having run businesses in six different jurisdictions that every local government has different rules about things such as whether a person can paint on their wall or attach to their wall something that has advertising on it. If a local government deems it to be unsightly or offensive graffiti, it could issue a notice to the owner regardless of what it is, with a request to remove it. However, it is important that we view this in conjunction with division 3, which provides that the owner has the right to object to that assessment. I believe that in the Armadale matter, part of that came down to why political advertising should be treated differently from any other form of advertising. I think there was some debate or conjecture about that at the time, but I am not fully across that issue. I think this needs to be viewed in conjunction with division 3. Obviously, if a political slogan had been put there without the owner's consent, that would be deemed an offence under this legislation and could be removed anyway.

Dr A.D. BUTI: I want to raise the Armadale case with regard to another clause. Going back to the definition of graffiti, the minister said that it has not changed. Under clause 5, the graffiti offence is outlined as —

> (1) A person must not destroy, damage or deface the property of another person by graffiti without that other person's consent.

Under clause 18, the minister said that it is regardless of the consent of the owner. Clause 18 states —

(1) This section applies to graffiti that is —

(a) applied to property with the consent of the owner …

Under clause 5(1), it is an offence only if the graffiti is done without the owner's consent, but under clause 18(1), it is regardless of the consent of the owner or occupier, so there is a difference.

Mrs L.M. HARVEY: I take the member back to clause 3, which is where the definition of graffiti is. That definition is —

graffiti means any drawing, writing, painting, symbol or mark applied to or marked on property by —

(a) spraying, writing, drawing, marking or otherwise applying paint or another marking substance; or

(b) scratching or etching;

Clause 5 defines the damaging property by graffiti offence, which is where we get into the issue of consent or non-consent for the application. Clause 18 refers to graffiti, which is defined in clause 3. It is not linked to whether consent or otherwise was obtained; it is just describing what graffiti is. Then there is a notice requiring the removal of graffiti. This is not linked to the offence of graffiti. If a local government sees graffiti that is unsightly or offensive, it can require the property owner to remove it if it has been put there consensually. Notwithstanding that, if it has been put there without the property owner's consent, there may well have been an offence committed by an offender in putting it there. In both circumstances, the local government can either give a notice to the owner to remove the graffiti or can remove the illegally applied graffiti.

Dr A.D. BUTI: Clause 18(1) can be put into play even though an offence has not been committed under this legislation. With the offence of damaging property by graffiti, evidence has to be shown that there was no consent. If there has been consent, it does not come under clause 5; it can only operate under clause 18. Under clause 5, who actually brings the action for the offence of damaging property by graffiti? If, say, the local government does not bring an action, who would? Is there anyone else? It would not be the owner because the owner has given consent. Who else could possibly bring an action?

Mrs L.M. HARVEY: The legislation does two things. In defining graffiti, it then defines graffiti vandalism, which is about an offender illegally applying graffiti to somebody else's property and damaging or defacing it et cetera. There is an offence there. The second part of the bill—these provisions—relates to the ability of local government to manage and control graffiti in the community. The best way to do that is to remove it as quickly as possible. What this relates to is not necessarily whether an offender has been apprehended or charged with an offence, but that local government has the ability to remove graffiti and obliterate it as quickly as possible using these provisions, which currently exist in the Local Government Act. It is two separate things. The police will charge offenders with graffiti vandalism, but we are ensuring that local governments will continue to have the ability to give notice to an owner who has willingly applied graffiti to their property that is unsightly or offensive to have it removed. It also gives local government the ability to remove unsightly graffiti at the request of a property owner who does not want it there.

Clause put and passed.

Clause 19: Additional powers when notice is given —

Ms M.M. QUIRK: In terms of the notice referred to in both division 2 generally and clauses 18 and 19 specifically, can the minister tell me what constitutes service of the notice?

Mrs L.M. HARVEY: Does the member mean how it is determined that a person has received a notice?

Ms M.M. Quirk: Yes.

Mrs L.M. HARVEY: My adviser says that the service of notice would be consistent with whether a notice has been served under the Interpretation Act.

Ms M.M. QUIRK: Can the minister advise what that is, given that there is a penalty for failure to comply? I would certainly like to know how it is going to be proved that the notice was given.

Mrs L.M. HARVEY: This is an existing provision in the Local Government Act and has been in place for 10 years. The service of notice procedure is going to be the same. I am not quite sure what the member is getting at, because this has been in operation for 10 years and has already been agreed to by Parliament. We are really just moving it from the Local Government Act to the Graffiti Vandalism Bill.

Ms M.M. QUIRK: I just want to know what that requirement is. I do not care that it is an existing provision. We are creating an offence of failure to comply. Whether or not it was in the Local Government Act, I just want to know what the obligations on local government are and how they go about proving that somebody did not comply.

Mrs L.M. HARVEY: I draw the member's attention to clause 18(2), which states —

> A local government may give a notice in writing to a person who is the owner of property or the occupier of a place on which graffiti described in subsection (1) is applied, requiring the person to ensure that the graffiti is obliterated in a manner acceptable to the local government within a time set out in the notice.

Going further, it states —

> (3) If the notice is given to an occupier of land who is not the owner of the property, the owner is to be informed in writing that the notice was given.
>
> (4) A person who is given a notice under subsection (2) is not prevented from complying with it because of the terms on which the land is occupied.
>
> (5) A person who fails to comply with a notice under subsection (2), without a reasonable excuse, commits an offence.

The local government needs to give notice in writing to a person who is the owner of a property or an occupier of a place.

Ms M.M. QUIRK: I understand all that. I understand that the requirement is to give a notice and I understand that the offence created is failure to comply. What I am saying is that in circumstances, for example, in which the occupier might not be there or they might not be able to serve the notice on him, is it sufficient for notice to be given by post or is it sufficient to leave it at the last-known premises? What are the requirements so that it can be said that that person is fully informed of the existence of a notice?

Mrs L.M. HARVEY: It the member goes further into division 3, she will see that there are several clauses linked to the ability of an affected person to oppose a notice, to request a review of a decision to give a notice, and to have the effect of a notice suspended. Should the local government give notice in writing to a person who is the owner or the occupier of a property and then as a result of that, for whatever reason, the owner of the property or the occupier of that place cannot comply, there is an opportunity under this legislation for them to appeal any subsequent penalty or outcome via the State Administrative Tribunal.

Ms M.M. QUIRK: Why should someone have to go through those processes when they did not receive the notice in the first place? How does someone even know to seek the review? I am just asking a basic question. I am not trying to be tricky. I just want to know: is service by post sufficient? Does it have to be left at the last-known premises? Can it be left with another person residing at the premises? What are the requirements to make that notice lawful? Sorry, did the minister just want to finish on her phone before she answers the question?

Mr C.J. Barnett: Don't be rude.

Ms M.M. QUIRK: I am sorry, Premier.

Mr C.J. Barnett: Just appalling behaviour from you.

Ms M.M. QUIRK: It is rude not to listen to the question, too.

The ACTING SPEAKER (Ian Britza): Thank you, members!

Mrs L.M. HARVEY: Thank you, member for Girrawheen. What I was going to do then was quote from section 74 of the Interpretation Act 1984, which defines how a notice is given and deemed to have been received if the notice is given in writing. My adviser is just bringing that up again, I do not have a copy of the Interpretation Act with me, but he has very kindly found it on his device. I will come back to that for the member for Girrawheen momentarily, and I will quote —

Ms M.M. Quirk: Is it section 74?

Mrs L.M. HARVEY: Yes, it is.

Ms M.M. QUIRK: On my reading of section 74, it states —

> Where a form is prescribed or specified under a written law, deviations therefrom not materially affecting the substance nor likely to mislead shall not invalidate the form used.

I suspect it is not section 74; I suspect it might be section 75, "Service of documents by post." I understand the minister will confirm that it is consistent with the Interpretation Act that service of these notices can be by post?

Mrs L.M. HARVEY: Indeed, member. As I responded earlier, it is subject to the service provisions of the Interpretation Act. I do not have a copy of the Interpretation Act with me, but I am very appreciative of my adviser being able to find that through his electronic device and advising us of the section of the Interpretation Act that applies.

Clause put and passed.

Clauses 20 to 24 put and passed.

Clause 25: Local government graffiti powers on land not local government property —

Dr A.D. BUTI: This clause actually gives quite strong powers, because a local government can remove graffiti on property owned by someone else that is not local government property. The member for Fremantle raised the case of the Liberal Party of Australia (Western Australian Division) Inc v City of Armadale in January 2013, which of course was very relevant to me. It revolved around the posters of my Liberal Party opponent and the appearance that my opponent was trying to win the election through posters. The Liberal Party took the City of Armadale to the Supreme Court of Western Australia on the issue of freedom of political communications. The interim decision made in chambers was that someone could, if they sought to, remove the election posters. Posters could definitely come under the minister's definition of "graffiti", so under this power they could be removed. I am not going to move an amendment. I am just asking: does the minister not agree that it is possible that this could run foul of the freedom of political communications?

Mrs L.M. HARVEY: If the member reads through clause 25(1), he would see that it states —

> (1) A local government may obliterate graffiti that is visible from a public place and that has been applied without the consent of the owner or occupier, even though the land on which it is done is not local government property …

The local government would approach the property owner and say, "You have got a wall here that has been graffitied, vandalised, can we clean it for you?" Generally the property owner gives consent, and that is what this clause pertains to.

Clause put and passed.

Clause 26: Application of Division —

Ms M.M. QUIRK: Obviously, the common law principle is that a man's home is his castle and powers of entry must be very much circumscribed. There is permission for a local government entity to enter onto land for the purposes of exercising powers in this bill. Can I have confirmation that the powers are limited to the obliteration of graffiti that is visible from a public place?

Mrs L.M. HARVEY: Clause 26(1) states —

> (1) The powers of entry conferred by this Division may be used for performing any function that a local government has under this Part, if entry is required for the performance of that function.

That clause is for the purposes that were outlined previously, which is for the removal of graffiti.

Ms M.M. QUIRK: Is that power of entry limited to time of the day or anything, or is it possible for a local government official to enter at 11 o'clock at night, for example?

Mrs L.M. HARVEY: These powers of entry are to do with the removal of graffiti. I would put to the member that local government officers and people removing graffiti are generally working within normal business hours. The bill does not specify that that needs to occur, but commonsense would dictate that local government would enter property at a reasonable time of day.

Ms M.M. QUIRK: I will put it another way. Commonsense has nothing to do with it; it is what is in black-letter law. As far as the minister is aware, there are no restrictions on the time that these powers of entry can be exercised.

Mrs L.M. HARVEY: If the member goes to clause 28, "Notice of entry", she will see that it states —

> (1) A notice of an intended entry is to be given to the owner or occupier of the land, premises or thing that is to be entered.
>
> (2) The notice is to specify the purpose for … the entry …
>
> (3) The notice is to be given not less than 24 hours before the power of entry is exercised.

A local government is not permitted to enter a property for the purposes of graffiti removal; it must give notice of that entry to ensure that the property owner understands that local government officers will be coming onto their property to do that function.

Ms M.M. QUIRK: Ultimately, I am concerned about clause 28, but I will ask a general question on this clause. Given there is a notice in the provision, is there a restriction under this proposed law as to what time of day a person can enter?

Mrs L.M. HARVEY: They need to give notice of entry. No, we do not specify the time of day and we do not limit local government.

Clause put and passed.

Clause 27: General procedure for entering property —

Ms M.M. QUIRK: This clause states that except if the entry is authorised by warrant, entry will not be lawful unless —

> (a) the consent of the owner or occupier has been obtained; or
>
> (b) notice has been given under section 28.
>
> (2) If notice has been given under section 28, a person authorised by the local government to do so may lawfully enter the land, premises or thing without the consent of the owner or occupier unless the owner or occupier or a person authorised by the owner or occupier objects to the entry.

My understanding is that that means entry without a warrant is permitted when there is the consent of the owner or a notice has been given. Is my understanding correct?

Mrs L.M. Harvey: Yes, that is correct.

Ms M.M. QUIRK: In what circumstances might it be contemplated that a warrant might be issued for a property? Why might that be necessary?

Mrs L.M. HARVEY: As an example, that would occur when graffiti has been applied to a property with the consent of the owner and a notice has been issued to the owner to remove it, but the owner has refused to comply. In those circumstances, the local government would then be able to apply for a warrant to enter the property to remove it. Obviously, the appeal process would have occurred in the interim.

Clause put and passed.

Clause 28: Notice of entry —

Ms M.M. QUIRK: Clause 28(4) states —

> Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

This is germane to the questions I asked earlier. Presumably those entries can be at any time, day or night. Over what period does the notice run?

Mrs L.M. HARVEY: That period runs until the graffiti removal process is completed.

Ms M.M. QUIRK: That brings up the general point about the necessity for the power of entry internally to premises. I understand that the land around premises is private property—for example, the external walls of a house or a commercial property—and that a person needs to give notice to go on to that property, but does that include the internal walls on that property; and, if so, why?

Mrs L.M. HARVEY: No, member, it is not the internal walls; it is only the areas on the outside where the offending graffiti is visible from a public place.

Ms M.M. QUIRK: Someone might have, for example, in their lounge room some sort of street art that might be interpreted by some as being graffiti. That might be visible from the street. Is the minister assuring us that entry would not be permitted in those circumstances or that a notice would not be issued?

Mrs L.M. HARVEY: That is correct. It is not intended that local government employees would repaint the internal walls of people's dwellings.

Clause put and passed.

Clause 29: Entry under warrant —

Ms M.M. QUIRK: Subclause 3 refers to a warrant being granted in an approved form. I presume that form will be set out in the regulations.

Mrs L.M. HARVEY: That is correct.

Clause put and passed.

Clause 30 put and passed.

Clause 31: Certain persons protected from liability for wrongdoing —

Ms M.M. QUIRK: I understand that this clause is in the bill to protect those who do anything in good faith in pursuance of the powers under this legislation. How does public liability insurance kick in under the provisions in this legislation? For example, does it mean that property owners do not need public liability insurance against this sort of action because ultimately the government will underwrite it?

Mrs L.M. HARVEY: Local governments have their own cover for employees of local government, and I believe in some sectors they have cover for any action that might occur to those employees when they are undergoing the functions of a local government. This is not about the individual property owners; the people performing these works will be covered by the liability insurance of the Local Government Act.

Clause put and passed.

Clause 32: Review of Act —

Ms M.M. QUIRK: Subclause (1)(b) refers to a review of the proposed act that will occur five years after the legislation comes into operation. I am sure that the minister has not addressed her mind to this—that is fine—but in relation to subclause (1)(b), the review will be of the operation and effectiveness of this proposed act. What sort of things will be a measure of the proposed act's effectiveness? Is it that graffiti is less prevalent? Is it the number of prosecutions? What measures will be used to determine whether this proposed act has been effective?

Mrs L.M. HARVEY: I envisage that the review of the operation and the effectiveness of the proposed act will look at things such as ensuring that the powers of entry and removal and the serving of notices and all those sorts of things that have been raised in consideration in detail are operating as efficiently and effectively as one would suspect, and also that all the powers and provisions provided for in the proposed act are contemporary.

Clause put and passed.

Clauses 33 to 44 put and passed.

Title put and passed.