

GRAFFITI VANDALISM BILL 2015

Third Reading

Resumed from an earlier stage of the sitting.

MRS M.H. ROBERTS (Midland) [2.44 pm]: I made the greater part of my comments before the lunch break today. I was just getting to the point at which I was raising the misuse of statistics by the Minister for Police. She well knows that graffiti statistics are often an unreliable indication of the amount of graffiti in a community. I say that because when we look at the statistics—for example, those pertaining to graffiti on the police website—I note that the police website can deal only with reported crime. It is reliant on someone reporting the graffiti. At various times there have been greater campaigns for the reporting of graffiti, including graffiti hotlines and encouragement by Crime Stoppers and others to report the crime of graffiti. Some councils have websites on which a person can report graffiti and so forth. Unless the graffiti is actually reported to the police and listed as an offence, we will not see the growth in the statistics. The non-reporting of graffiti crime in the community can actually see it diminish. We can have a reduced effort on graffiti from a government perspective if it spends less money and does less, which, as a result, is likely to see a decrease in the number of reports of graffiti. Just because there is a decline in the number of reports of graffiti does not mean that there is an actual decline in graffiti. Likewise, the government could be extremely proactive and encourage people to report graffiti. It could provide more avenues for the reporting of graffiti by phone, website, a Facebook page or a whole range of ways that a person could report and collate the number of graffiti offences and reports of graffiti. Doing so could potentially drive up the number of so-called “reported” crimes of graffiti.

There is an oft-used saying: damned lies and statistics. It is very easy to misuse, abuse and misquote what the statistics relating to graffiti actually mean. The minister has wasted a fair bit of time quoting various figures and making some politically partisan claims about whether graffiti is on the rise. The fact of the matter is that I have seen no evidence to suggest that the amount of graffiti in the community is on the decline. Maybe there is a decline in the reporting of graffiti. That would not surprise me because the advice that I get from my constituents and indeed correspondence that I receive as shadow Minister for Police from people all around the state more and more indicates to me that police are, if anything, discouraging people from reporting what could be described as minor crimes. People can see that we have a police force that is under pressure and they are very mindful about not disturbing police or occupying important police time on what might be a minor matter. Many people in the community heed the message that the best deterrent to reduce graffiti is to immediately remove graffiti. Rather than bother the police, go online or attend a police station or the like and actually report the crime of graffiti, many people in the community just go straight out there and remove the graffiti off their front fence or building as quickly as possible, as the quickest possible deterrent. In many instances the offenders are long gone and the public is not aware whether any forensic material can be gathered. In fact, most people do not have a high expectation that police would actually attend. More and more I am hearing stories that there is a significant delay in police attending home burglaries and taking forensic evidence, so the community expectation of attendance to graffiti crime has come to an all-time low. When making political partisan points and talking about whether graffiti statistics are going in one way or another, there are no independent statistics that demonstrate whether graffiti crime is on the rise. All that can be referred to is the number of reported crimes of graffiti. The statistics may in fact be more indicative of how inclined people are to report a crime, rather than how prevalent the crime may be.

The community of Western Australia is owed more than just a tit-for-tat, them-and-us kind of commentary about how we are better on graffiti or the other lot are better on graffiti, and the quoting of spurious statistics and attempting to demonstrate that those statistics prove something. The statistics do not necessarily prove anything. I do not think those kinds of argument actually cut much ice with the general public, because people can use their eyes and see what is happening in their community. People know whether their front fence has been vandalised. People know when they go to their bus stop whether someone has scrawled all over the bus shelter. People know whether that graffiti is happening now or whether it is something they used to encounter four, five or six years ago. So, we can argue until we are blue in the face, but if people see what is happening around them in their community, they are not going to accept those arguments.

The fact of the matter is that graffiti remains a concerning crime. I am of the view that the kind of broken-windows approach that was taken in New York some years ago under Police Commissioner Bratton, which many people have reported on, is a good approach to law and order. If we want to make the community safe, we need to deal with the minor crimes as well as the major crimes. The only problem in this state is that we are seeing a lot of lip-service on just about all crime and all community safety matters and we are seeing very little that is on the improve.

As I said at the outset, the Graffiti Vandalism Bill is more about appearances than anything else. It is an attempt to make it look as though the government is serious about graffiti and is introducing some new laws to deal with graffiti vandals. The fact of the matter is that graffiti vandalism—in fact, all property damage—is already covered in the Criminal Code. Most of the provisions of this bill are already in other statutes. Therefore, I am not anticipating a great deal of change as a result of this bill.

Having said that, as I stated at the start of these few comments, there are not matters in this bill that we oppose; therefore, we will be supporting the legislation at the third reading stage.

DR A.D. BUTI (Armadale) [2.53 pm]: I rise to make a brief contribution to the third reading stage of the Graffiti Vandalism Bill. During consideration in detail, we had quite a discussion about the word “vandalism”. That word is not defined in the bill, and there was some confusion about what this bill seeks to do and whether the government is of the view that graffiti is something that should not be allowed, or whether only graffiti that is considered to be vandalism should not be allowed. However, we do not know, because we do not have a definition of vandalism in the bill.

We understand that in clause 5 of the bill, the government has set out the terms of the offence of damaging property by graffiti. As the member for Midland has said, a lot of this bill is just window-dressing. Graffiti damage is a major issue for many people in our society, and of course it should be addressed. This is just another bill whereby the government is pretending that it is tough on law and order issues. This bill is really just about consolidating much of what is already contained in the Criminal Code, and many of the clauses in this bill simply reproduce what is already contained in the Criminal Code.

During consideration in detail, the member for Girrawheen and I asked a number of questions about clauses of the bill. It is interesting that the Premier decided to poke fun at the member for Girrawheen and me for daring to have the view that consideration in detail is an opportunity for members to question the detail of the various clauses of a bill. It is not our fault that the minister was unable to give clear answers about many of the clauses of the bill. It is interesting to look at the minister’s answers, because they seemed to jump around a bit. In answer to a question about whether the offence under clause 5 of the bill is a strict liability offence, the minister said initially that it was a strict liability offence. The minister said also that section 24 of the Criminal Code is not incorporated into the bill. The minister came back later and corrected that by telling us that section 24 of the Criminal Code is incorporated into the bill and therefore it is not a strict liability test. Of course the minister did the right thing, when we took this matter up again, and corrected that issue. I look forward to the minister doing the same thing with regard to a number of the statements she has made about domestic violence. No-one can expect any minister in charge of any portfolio to know everything. However, one would hope that a minister would have a good command of certain issues, and, if a mistake is made, that they would come back at the first opportunity and correct the record.

Clause 13, “Forfeiture of property”, is very interesting. I do not think anyone would debate that it is reasonable to allow the court to order that any implement that is used in the commission of a graffiti offence be taken away from the offender. The issue is the wording of the clause. We have not had a clear explanation from the minister about the meaning of that clause. It states, “any thing that was used in or in connection with the commission of the offence”, including a graffiti implement. That is understandable. However, there is one question that I did not ask the minister, and I do not expect that the minister or her advisers would have put their minds to this, but would a vehicle that is used to carry a graffiti implement be part of the commission of the offence? I am not sure. Surely if a person has transported a graffiti implement in a vehicle in order to commit an offence, there may be some argument for that vehicle to be taken away from the offender. However, I am sure that the bill is not intended to operate in that way.

The issue that we are dealing with in clause 13 is the transmission of images. I understand the public policy rationale behind this; we do not want to glorify graffiti by allowing people to communicate their efforts to the wider world. However, as I have said, the clause states, “any thing that was used in or in connection with the commission of the offence”. If a person has taken a photograph of some graffiti that has already happened, I am not sure how that can become part of the commission of the offence. The offence has already happened. The minister provided the example of a person who has a GoPro and records the act of graffiti taking place. I can understand that, because that is a real-life recording of the offence. The minister seemed to flip-flop on this clause. She actually got to the point of saying that we should bring in an amendment to this clause. At one stage I asked the minister whether it is an offence to take a photograph of a graffiti image post that image being put up on a wall, or whatever, and the minister said that the transmission of a graffiti image is not an offence. I believe that is the case. Therefore, if the transmission of a graffiti image is not an offence, how can the court take away a person’s iPhone under clause 13(2)(b)? I do not see how that is possible, but the minister seemed to backtrack on that. I think she may have said that it is an offence, although I cannot find it in *Hansard*. At one stage, she said that the transmission of the image is not an offence, so if it is not an offence, how can the implement that transmits the image be taken away under clause 13(2), which refers to “any thing that was used in or in

connection with the commission of the offence”? I think that still remains unclear. The minister might be able to clarify that for me. I do not think it is appropriate that it is not considered to be a legitimate use of parliamentary time for members to ask the minister questions about clauses of the bill. That is what we are here for—to try to get some clarity. We assisted the minister in that respect, because she thought that the offence was a strict liability offence and that section 24 of the Criminal Code was not incorporated. However, she then sought further advice and corrected that. Maybe if we had not asked that question, we would still be in limbo on that matter. The minister also did not have a clear understanding of that situation.

The opposition supports the bill. We do not think it is the panacea to reducing the incidence of graffiti damage. A legal framework is necessary, but it needs to be backed up with various policy initiatives to try to reduce the number of young people in particular, but not only young people, who want to engage in graffiti that is of a damaging nature.

MRS L.M. HARVEY (Scarborough — Minister for Police) [3.01 pm] — in reply: It gives me great pleasure to rise to close the third reading debate on the Graffiti Vandalism Bill 2015. As I said in the second reading speech and during the consideration in detail stage of the bill, it fulfils a 2013 election commitment of the government to create stand-alone graffiti legislation to require the courts to impose a graffiti clean-up order when convicting an adult or juvenile graffiti offender; strengthens the capacity of the Public Transport Authority to ban serial offenders; incorporates the existing power for local government to enter private land to remove graffiti that is visible from a public place; and incorporates and clarifies existing graffiti implement offences.

Currently, offenders who are convicted of a graffiti offence are charged, as the member for Midland mentioned, with criminal damage under section 444 of the Criminal Code or with property damage under section 445 of the Criminal Code. Offenders generally receive more lenient sentences when charged under these sections because graffiti is considered a lower level offence compared with other acts of damage. On the assertion that it is difficult to obtain accurate statistics for graffiti damage, the member for Midland is correct; when all the offences are lumped into one category, such as criminal damage or property damage, it is very difficult to ascertain which of those are more at the graffiti vandalism end of the spectrum, which might involve tagging or other more serious and permanent graffiti vandalism offences, and which are offences of property damage that might involve, for instance, an offender smashing every window of the local primary school and being similarly charged with a property damage offence. That range of offences is covered under the existing criminal damage or property damage offences. We have created a stand-alone graffiti vandalism offence so that we can pull out the graffiti vandalism offences from the other property damage offences. Currently, they coexist and it is difficult to determine the level of convictions and therefore the effectiveness of police with graffiti vandalism offences.

The stand-alone graffiti offence is intended to be broad in order to cover any form of graffiti damage. A graffiti-marking offence will apply regardless of whether the graffiti is visible to the public or has been done without the consent of the property owner. This will allow private businesses and residents access to graffiti clean-up services. As members have said, the offence for graffiti will have a maximum penalty of two years' imprisonment and a fine of \$24 000. Adult offenders who are convicted will receive a minimum penalty of a community-based order. Offenders will be required to complete a minimum of 10 hours of unpaid community work. Adult and juvenile graffiti offenders who are convicted will be required to perform graffiti-removal work, where practicable. The term “where practicable” is included in the bill to allow the Department of Corrective Services to have flexibility in managing graffiti offenders through that program.

Courts will have the ability to order convicted graffiti offenders to forfeit any camera, mobile phone or device used by the offender to record graffiti damage. The existing graffiti-related provisions contained in the Criminal Code—that is, section 216, “Selling graffiti implement to child”; section 446, “Costs of cleaning graffiti”; and section 557G, “Possessing thing for applying graffiti”—will be repealed and replicated in the Graffiti Vandalism Act. Local government graffiti-related powers will be removed from the Local Government Act and replicated in part 3 of the Graffiti Vandalism Act. The amended powers of the Public Transport Authority Act will allow security officers to apprehend persons reasonably suspected of committing the offences of graffiti damage, criminal damage, trespass or disorderly behaviour without the need for the offence to continue to be repeated. Risk provisions have also been included in clauses 11 and 12 to protect those involved in the graffiti clean-up and also private property owners when graffiti removal works occur.

It is important to note that this legislative change is not our only instrument to tackle graffiti. In response to the growing problem of graffiti and the cost associated with its removal in our community, which is estimated at around \$25 million annually, the Liberal-National government announced its commitment to implement a whole-of-government approach to tackle graffiti vandalism across Western Australia. We re-established the State Graffiti Taskforce, and it has implemented its Tough on Graffiti strategy. Since the re-establishment of the task force in 2009, the committee has met on 32 occasions, and I acknowledge your participation in that process, Mr Acting Speaker (Mr N.W. Morton). This commitment represents a stand-out success in the strength of

partnerships and cooperation between asset owners, our local government authorities and state agencies to target graffiti. The government's graffiti strategy is multi-pronged, addressing graffiti on a number of fronts.

Under the guidance of the task force, there has been the development of the Goodbye Graffiti database, which enables local governments to streamline their graffiti-reporting processes; the creation of a centralised taggers intelligence database to assist our frontline police with graffiti offender apprehensions; and the establishment of the pre-court juvenile clean-up program. Currently, 376 young people have successfully completed the program, and they have cleaned graffiti off 2 407 assets since it commenced in 2010. As part of the concerted effort to target graffiti vandals—police have been active in this space—WA Police has conducted a series of targeted graffiti operations across our policing districts. We have had nine phases of Operation Eraser, and just recently Operation Quadrangle, resulting in 1 263 offenders being apprehended and charged with 3 951 offences. There have been 178 grants awarded to support projects that increase the capacity of local governments and incorporated not-for-profit organisations to reduce the level of graffiti, including clean-up activities, prevention programs and improved mechanisms for reporting graffiti. The government strategy has had an impact on reducing the number of graffiti vandalism offenders in WA, and we will continue to further tackle the issue of graffiti and reduce the burden of the cost of its removal on all sectors of the community.

In the consideration in detail stage, there was some conjecture about the title of the bill, but we did manage to get into an analysis of the substantive provisions of the bill. With regard to the graffiti damage offence, many concerns were raised about whether public art, or street art as some called it, would fall foul of this offence. As discussed at length, if any graffiti, which is defined in the bill, is applied without the property owner's consent, it constitutes an offence under this legislation. That is very clear. During the committee stage, the member for Cannington made some interesting comments about the definition of "public place" for the purposes of the various clauses relating to the local government provisions. I would like to clarify that the definition of "public place" is consistent throughout criminal law—for example, section 1 of the Criminal Code and section 3 of the Criminal Investigation Act. The reference to "section of the public" covers situations in which access to a place is restricted to only a specific category or categories of a person. For example, licensed premises are public places restricted to people who have reached 18 years of age. "Section of the public" in the context of the definition of "public place", means a section of the public in their capacity as a member of the public. This does not include a person who is acting in their private capacity as a homeowner, an employee or a specific authorised or invited person.

On the member for Armadale's comments about whether this is a strict liability offence, I clarified that section 24 of the Criminal Code, "Mistake of fact", applies. Section 24 reads —

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

It goes on, but I quoted that during consideration in detail if members would like to go back to that.

Dr A.D. Buti: I did acknowledge that.

Mrs L.M. HARVEY: Yes. That section applies because section 36 of the Criminal Code reads —

The provisions of this Chapter apply to all persons charged with any offence against the statute law of Western Australia.

If there is any ambiguity about whether consent had been obtained before the graffiti had been applied, and the person applying the graffiti was charged with a graffiti vandalism offence when they thought they had the express permission of the owner to apply the graffiti, they could use section 24 as a defence with respect to mistake of fact in those circumstances.

In conclusion, I am really proud to see another election commitment well on its way to being delivered. This legislative change will better equip police to tackle Western Australian graffiti vandals. It will ensure that appropriate penalties are handed down to offenders, as their graffiti offences will be compared with like offences, not other damage offences. At a minimum, those convicted of the stand-alone graffiti offence will receive a community or youth community-based order. We did exactly as we said we were going to do for the community in bringing this legislation to the house. We will ensure that 10 hours of community service involving graffiti clean-up is imposed where practicable, as a punishment for this an offence. That is in accordance with community expectations that the penalty for offenders who vandalise property with graffiti should be cleaning up the mess that they made. This legislation forms one part of a successful and effective strategy in tackling graffiti vandalism. I look forward to informing the house of the success of this legislation once it is in operation. I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.