



3 September 2010

C62, 71.5

JM; rp

The Honourable Stephen Wade MLC  
Shadow Attorney-General  
Parliament House  
North Terrace  
ADELAIDE SA 5000

Dear Mr Shadow Attorney

***Graffiti Control (Miscellaneous) Amendment Bill 2010***

I refer to your letter of 4 August 2010 seeking comment on the Private Members' Bill. The Society's Criminal Law Committee has considered the Bill and provides comment as follows:-

The Bill seeks to deal with policy considerations concerning graffiti control. As such the Committee does not have any submission to make. However, there are a number of aspects of the Bill which concern the recording of offender details and the statistics. The requirement for a Register of offenders and its inspection by authorised persons is not readily apparent. The police will already have this sort of information. That sort of intelligence or information is to be used by the police for policing purposes. It is unclear what is the policy, need or requirement for the Register.

The proposed amendments to the *Criminal Law Consolidation Act 1935* also concern information recording as to statistics. It is not clear what need there is for that. Statistics can be gathered by the Office for Crimes Statistics.

There may or may not be suitable programs in existence in respect of graffiti removal etc. The difficulty with this sort of approach is that if programs do exist (and that is by no means clear) then this is an aspect of sentencing. Therefore the provision should be located in the *Criminal Law (Sentencing Act)*. It should not be an amendment to the *Criminal Law Consolidation Act*.

The provision for mandatory payment of compensation has a particular policy consideration behind it. More work needs to be done to identify the rationale for such a policy. Payment of compensation is an aspect of sentencing and so this should be included in the Sentencing Act.

The provision also seeks to impose a further punishment by way of driver's licence disqualification wholly unrelated to the nature of the offence. This is not appropriate. A driver's licence disqualification is irrelevant to the crime. It is not appropriate to impose penalties or punishment unrelated to the nature of the offence as a matter of good policy. The mandatory driver's licence disqualification approach is unsound and unprincipled. Persons might be disqualified from holding or obtaining a driver's licence even if they have not committed the offence arising out of the use of a motor vehicle or even if they do not hold a driver's licence or do not drive.

Furthermore, the consequences of driver's licence disqualification gives rise to a further imposition upon a person who has a driver's licence who must then re-apply for a license and start all over again. This adds to the lack of proportionality in such an approach.

There does not appear to be any sufficient rationale for many of the proposals in this Bill.

The Bill proposes a licensing system for the sale of spray cans. As a method of control, there is not any evidence or analysis to support the introduction of such a system. The imposition upon the business community is disproportionate to the nature and need for management of the conduct. It is unlikely to have much effect on the control of graffiti in any event.

A number of provisions in the Bill require production of identification and the recording of that information when purchasing such items. This is intrusive. Purchasing items such as spray cans should not require the recording of personal identification details on a register. The balance between the invasion of privacy and confidentiality and the management of the risk of graffiti offences is not efficacious. Insofar as these provisions seek to break the perceived link between the purchase of a spray can and the type of person that commits a graffiti offence, then there is not any evidence to demonstrate or support such a conclusion. Rather, this will merely serve to impose upon ordinary members of the community and unnecessarily interfere with their ordinary day to day activities of purchasing items for a proper and lawful purpose. One can well therefore foresee that every supermarket, every stationery supplier, every other supplier will have to maintain such databases. This will increase cost to the whole community. There are not any safeguards for the integrity, sanity, use and confidentiality of such databases. Of course such items may be obtained from many other sources other than by retail yet will not subject to any such controls. Such a regime is discriminatory, arbitrary, intrusive and disproportionate.

Section 8A empowers the police to search and obtain information without the usual and traditional requirements to have a reasonable cause to suspect. It involves investing a significant and intrusive power on the police to stop and search people in vehicles without cause. That is objectionable. It may give rise to difficulties. Such a power is disproportionate.

The Committee does not support the Bill.

Yours sincerely



Jan Martin  
**EXECUTIVE DIRECTOR**