



Graffiti Control Amendment (Racist Graffiti) Bill 2012

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Walt Secord.

Second Reading

The Hon. WALT SECORD [12.23 p.m.]: I move:

That this bill be now read a second time.

I am proud to introduce the Graffiti Control Amendment (Racist Graffiti) Bill 2012. The Graffiti Control Act 2008 regulates graffiti and the supply of graffiti material and outlines sentences. This bill will amend existing graffiti control legislation to create the specific offence of racist graffiti. In doing so, it will be an Australian first—although hopefully not for long. I sincerely hope that other jurisdictions will look at this proposal. The activity that these amendments seek to eradicate is particularly vilification and intimidation on the basis of race, culture or on ethno-specific grounds. This State, and indeed this nation, has substantial legislative frameworks that balance the right to express opinion against the right to live free in our society from unjust vilification and persecution. However, I believe freedom of speech should not extend to racial hatred.

Racial vilification laws exist in New South Wales, Victoria and Western Australia. Currently, a citizen of this State is prevented from verbally harassing another person or inciting hatred or violence on the basis of race or culture under the racial vilification laws. Fortunately, an overwhelming section of our community agrees with and supports these laws. Those few who wish to fill our communities or our publications already find that their intentions transgress our anti-racial vilification laws. That is the reason our attention should be on those who foment hatred through racist graffiti. They do so anonymously and, therefore, with additional cowardice. Their offence is aggravated by the physical destruction that accompanies it, yet it is currently against the law in New South Wales to engage in racist graffiti.

There are two ways for authorities to respond: either a charge for graffiti and/or vandalism offences, or under the racial vilification laws. Under the racial vilification laws, it is against the law to do anything publicly that could encourage racial hatred, serious racial contempt or severe racial ridicule against a racial or ethno-specific group. This type of behaviour is called "racial vilification". The Anti-Discrimination Board of New South Wales states that the following types of behaviour could be racial vilification and against the law: racist speeches; racist statements in public; racist graffiti; racist statements or remarks in a newspaper or other publications as well as radio and television; people wearing racist symbols, such as badges or clothing with racist slogans in public; and racist posters in a public place.

There has never been a conviction for serious racial vilification in New South Wales or in Australia. However, there have been convictions for graffiti. This bill puts racist graffiti where it belongs: with the police rather than with the Anti-Discrimination Board of New South Wales. This legislature can change the situation, and that is the purpose of the bill before us. Such acts of racist graffiti go well beyond the inconvenience and damage that is inflicted by ordinary vandalism. They are acts of intimidation. They broadcast vilification and hate. It is also public intimidation. They are incitements to real violence against persons and property. Racist graffiti is distinguished by its cruel intent and egregious impact. It deserves to be distinguished by our law accordingly. A perpetrator's criminal record should permanently record that they have committed an act of racist graffiti rather than simple vandalism. This kind of vandalism goes well beyond "misspent youth" or even mindless destruction. It is different from the graffiti that we see on trains or in alleyways. Much of this racist graffiti is in fact clearly planned and calculated for maximum offence and psychological violence.

A swastika is a contentious and offensive symbol in any context, but painted on a house of worship such as a temple or synagogue it takes on a new and more offensive context. Further, when painted on a synagogue or a temple where large numbers of Holocaust survivors and their descendants come to worship it transcends mere "offensiveness" to be an outright attack on a section of our community. This is graffiti of an entirely different intent and impact than a simple

tag by a skateboarder. Daubing a racist slogan on a temple, church, synagogue or mosque is not an expression; it is outright incitement to hatred and violence, and has no place in our society. The offence of racist graffiti sends a clear message that such acts offend not only the property owner but also our community and the people of New South Wales who embrace tolerance and diversity.

The object of the Graffiti Control Amendment (Racist Graffiti) Bill 2012 is to amend the Graffiti Control Act 2008 to create a specific offence for the placing of racist graffiti on premises that can be seen from a public place. Under the bill, it will carry a maximum penalty of \$2,200, or imprisonment for 12 months. Further, the bill notes that community service orders may also be made under the Crimes (Sentencing Procedure) Act 1999 or the Children (Community Service Orders) Act 1987, directing a person to perform community service work instead of imposing a fine or sentencing the person for an offence under this section.

I now turn to specific aspects of the bill. The main change is an amendment to section 6A of the Graffiti Control Act 2008. Racist graffiti is defined as "any drawing, writing, symbol or other visible representation that could reasonably be assumed to be intended to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group ... and placing racist graffiti on premises means affixing a placard or paper containing the racist graffiti on the premises or marking, by means of chalk, paint or other material, the premises with racist graffiti".

As part of my discussions with community groups over almost eight months, I have taken a number of suggestions on board. For example, I am grateful for the contribution made by the World Conference of Religions for Peace New South Wales Branch, which is convened by Mrs Josie Lacey, OAM. For the record, Mrs Lacey has told me that she wholeheartedly supports the initiative. Further, she and her husband, Mr Ian Lacey, were instrumental in securing support for the original racial vilification laws in New South Wales. On 26 August the Laceys were made life members of the Ethnic Communities' Council of New South Wales for their lifelong work in anti-racism, anti-racial vilification and inter-faith dialogue, as well as supporting multiculturalism and diversity. It was the highest constitutional honour that the Ethnic Communities' Council can bestow on its members.

On Tuesday night, 16 October, I had the honour of addressing the monthly plenum of the New South Wales Jewish Board of Deputies along with the member for Vacluse, Gabrielle Upton. We were there in our capacities as deputy chair and chair of the New South Wales Parliamentary Friends of Israel respectively. At that meeting, we were asked our positions on current racial vilification laws and what we thought about the Federal Liberal leader Tony Abbott's claim that he wanted to wind back the laws at the national level. I said that Labor supported the anti-racial vilification laws and that they will be retained. The matter was raised by the Executive Council of Australian Jewry's Mr Peter Wertheim.

As part of the consultation process on the bill, the World Conference of Religions for Peace New South Wales Branch members suggested a very important improvement to the bill. It is important because the New South Wales chapter comprises spiritual leaders and adherents of the Buddhist, Bahai, Uniting Church in Australia, Catholic, Jewish, Muslim, Sikh and Hindu faiths. The World Conference of Religions for Peace New South Wales Branch wanted an amendment to proposed section 6A, which states:

if, on a prosecution of a person for an offence under this section, the court is not satisfied that the person is guilty of an offence under this section, but the court is satisfied that the person is guilty of an offence under Section 6, the court may convict the person of the offence under Section 6.

That has now been included in the bill, ensuring that even if the test under proposed section 6A is not met, an offender may nonetheless be found guilty under the existing section 6. That is an important improvement and I welcome that contribution. On 10 September I also spoke to Ms Heather Richards, President of the University of Newcastle Students Association, who released a report on racist activity on the campus. Ms Richards expressed her support for the legislation to create a specific offence of racist graffiti. I point out that she stressed the need for the NSW Police Force and the Government to be vigilant in combating racist violence against international students. She wants a reference group with local authorities, the university, students and local police to tackle the problem. Disturbingly, she said that there had been 162 reports of verbal and physical assault against international students on the main campus. There are about 3,500 international students on that campus. Even more troubling was that 15 per cent of students did not report physical assaults against them. Most of those students were from Asia and the Middle East.

A specific offence of racist graffiti will send a clear message to perpetrators of hate that such attacks will be distinctly prosecuted and punished. This offence will tell our communities that New South Wales remains committed to leadership against racial vilification in our society. The bill defines race as colour, nationality, descent and ethnic, national origin or ethno-religious groups. For clarity, ethno-religious groups are specified to cover groups such as Jews, Muslims and Sikhs. This is the same definition used by the Greiner Government when it introduced Australia's first racial vilification laws to cover the Jewish, Muslim and Sikh communities. In 1989 the Greiner Government, with the bipartisan support of the Bob Carr-led Labor Opposition, created Australia's first historic and groundbreaking racial vilification laws. At the time, it was deemed that in most cases

racist graffiti could be addressed and came under the responsibility of the New South Wales Anti-Discrimination Board.

As I have said previously and in a previous speech in this Parliament, I stress that my bill is no reflection on the hard work of the Anti-Discrimination Board and its president, Mr Stepan Kerkyasharian, AO. Mr Kerkyasharian, whom I have known since 1988, has done an outstanding job in the area of combating intolerance and prejudice. Rather, the Graffiti Control Amendment (Racist Graffiti) Bill 2012 will complement existing anti-racial vilification laws and the Anti-Discrimination Board's work in countering discrimination and racism in our community. More importantly, it will shift responsibility for prosecuting such acts to the NSW Police Force, which is where criminal prosecutions belong.

As background, members will recall that on 10 August 2011, during debate on the Graffiti Legislation Amendment Bill 2011, I suggested the creation of a specific offence of racist graffiti. Before the March 2011 election, the then Attorney General and Minister for Citizenship, Mr John Hatzistergos, proposed the creation of a special offence of racist graffiti. On 30 May 2012 I provided further details to this Chamber in an adjournment speech about how I was intending to proceed and said that I would be consulting with various community groups. Since then, I have personally advanced the proposal. I put my proposal to previous shadow cabinet and the New South Wales Labor caucus, where it received unanimous support. As I said, I have also consulted many community groups on this bill.

To illustrate the need for this bill, I draw members' attention to a disgusting attack on an Aboriginal burial site and memorial at Fingal Head on 6 March. Vandals desecrated Aboriginal tombstones and attacked a memorial with graffiti. They drew Nazi swastikas and wrote the letters "KKK". It is the only Indigenous graveyard in the Tweed shire and is the resting place for about 100 Aboriginal and Torres Strait Islanders. In doing so, the perpetrators ensured that this was not an ordinary graffiti attack. These are clear and internationally known symbols of racial oppression, violence and genocide. This was an attack with the calculated purpose of causing maximum offence and pain to and intimidation of the Aboriginal community. Since then I have spoken to members of the Aboriginal community who have relatives and family connections to those buried in that cemetery.

Members will also recall that on 8 March I raised this matter in Parliament, asking a question without notice about the police investigation into the Fingal Head attack. At the time the New South Wales Government and the Opposition rightly condemned the actions of the perpetrators. I thank the Hon. Duncan Gay, representing the O'Farrell Government for his comments. He said that he was sickened by the incident and described it as an "absolute disgrace". He also said:

Indigenous people across the State are no doubt profoundly dismayed by this event and the Premier has asked me to assure them that we share their hurt and outrage.

I know that the Hon Duncan Gay's comments were appreciated by the community. Since that incident, I have sent a copy of this bill to the New South Wales Aboriginal Land Council for its consideration. On 3 August the council wrote to me to express its support for the bill. On 15 June Shane Phillips, who has a family connection to the site where the Fingal Head attack occurred, wrote to say that he also supported the bill. He is the chief executive officer of the Tribal Warrior Association Incorporated, which is a Redfern organisation promoting Aboriginal culture and training. Describing himself as "an everyday Australian", Mr Phillips said he thought it was an important measure.

Yet, unfortunately, racist graffiti is not an issue limited only to this attack or to the Aboriginal and Jewish communities. Earlier this year, the Armenian community's official roof body organisation wrote to express its support for the bill. Armenian National Committee of Australia executive director, Mr Vache Kahramanian, wrote on 11 June saying that the Sydney Armenian community had been subjected to several attacks and supported the creation of a specific offence of racist graffiti. Mr Kahramanian said:

We concur with this proposed bill in light of the numerous racially motivated graffiti attacks the Armenian community has faced, most notably during the last decade.

He pointed to many specific incidents. In April 2005 Ryde City Council unveiled a memorial plaque in the suburb of Meadowbank in recognition of the Armenian genocide. A month later the new monument was vandalised and desecrated by an unknown individual or persons. Mr Kahramanian said that it caused great offence within the local and wider community. He went on to state:

Incidents of racial vilification through the use of graffiti have been an issue many community groups continue to face.

The monument's plaque and headstone was once again vandalised in August 2011. Unfortunately, Mr Kahramanian said such events are not isolated to the Armenian, Jewish and Aboriginal communities. In 2010 Fairfield City Council unveiled a monument to the victims of the Assyrian genocide and it was also attacked with offensive slogans. The community joined forces to repair the monument; however, two years later it was again defaced with racist slogans. And, of course, our Jewish community is well aware of the impact of racist graffiti both currently and, tragically, historically. The Jewish community reports that there are between 15 and 20 serious anti-Semitic graffiti incidents a year on Jewish places of worship nationally.

During the consultation period before I introduced this bill I sought comment from Mr Jeremy Jones, AM, who is well known for his work in combating racism and promoting inter-faith dialogue. Mr Jones is Director, International and Community Affairs, Australia-Israel and Jewish Affairs Council. He is also former President of the Executive Council of Australian Jewry, the national elected peak body of the Jewish community. In his comment on the proposed amendments, Mr Jones has provided me with words that, I think, go to the very heart of this issue. These are words that I think members should hear, as they really encapsulate why these amendments matter. Mr Jones wrote:

Graffiti is vandalism of property, and racism is vandalism of the moral fabric of our society. When the former is used to propagate the latter, it becomes something much greater than public mischief, it becomes a challenge to basic decency and the dignity of the Australian people.

At a time when sporting, social, religious and other civic organisations around Australia are joining the new national anti-racism campaigns the New South Wales Parliament can show real leadership in society's standards and a commitment to letting racists know they face consequences for their action.

If we want to erase hatred, surely a good start is to erase the public manifestations of hatred.

I could not have expressed the importance of this bill more clearly. I thank Mr Jones for those words. The Graffiti Control Amendment (Racist Graffiti) Bill 2012 will commence from its assent. Therefore, I conclude on those sentiments, and thank members for their consideration. I commend the Graffiti Control Amendment (Racist Graffiti) Bill 2012 to the House.

Debate adjourned on motion by the Hon. Amanda Fazio and set down as an order of the day for a future day.