

LAW & WATER: AN HOLISTIC APPROACH TO GRAFFITI REDUCTION AND PREVENTION

Linda Lavarch MP
Chair of the Queensland Graffiti Taskforce

*Paper presented at the
Graffiti and Disorder Conference
convened by the Australian Institute of Criminology
in conjunction with the Australian Local Government Association
and held in Brisbane, 18-19 August 2003*

Introduction

It would be fair to describe the last 20 years as decades of community demands for a retributive criminal justice system. Of the three theories of criminal sentencing I studied at Law School, namely, retribution, deterrence and rehabilitation – it is retribution which has prevailed in the political and popular debate since the mid 1980's.

Maybe, like so many things, this modern trend started in the United States – as I recall it can be traced back to the infamous Willie Horton revolving prison door TV advertisement which so damaged the Michael Dukakis presidential campaign. Whatever its initial antecedence, I can't recall an Australian state election since the mid-1980s which has not had a heavy emphasis on law and order issues.

Call it what you like – a law and order auction or a competition about which party or which leader is more hairy-chested when it comes to being “tough on crime” – the result is the same, namely, an ever increasing ratcheting up of penalties and an ever diminishing role for judicial discretion in sentencing.

This phenomenon of the fear of crime has been well canvassed and reported on in various ways by the AIC and I won't relitigate the issue today except to use it as the backdrop for consideration of governmental and community responses to the problem of graffiti.

Graffiti Laws in Queensland

Graffiti is as old as civilisation itself. However, as a modern experience, graffiti has been part of western society since the emergence of hip-hop sub-culture in the 1970s and 80s. In other words, the widespread appearance of graffiti in cities and towns has coincided with the “hang 'em high” demand of law enforcement and punishment. Not surprisingly, therefore, the laws dealing with graffiti in Queensland have become more extensive and more severe, as in its small way, anti-graffiti laws have been part and parcel of the wider law and order auction between political parties and the sensationalist “if it bleeds – it leads” methodology of the popular news media.

This strengthening of laws resulted in the 1997 amendments to the Queensland *Criminal Code*¹ and the *Vagrants, Gaming and Other Offences Act*² which created graffiti specific offences and substantially increased the penalties for graffiti offences. These 1997 amendments followed graffiti being a particular issue in the 1995 state election during which the National / Liberal Coalition released a “Graffiti and Vandalism” Policy and the then Goss Labor Government announced its somewhat more colourfully titled “The Goss Plan to Tackle Graffiti Louts” response.

The net effect of the 1997 amendments was to make Queensland's law the harshest anti-graffiti regime in Australia. As it stands the law in Queensland provides :-

- for graffiti to be a serious indictable offence whereas in most other Australian jurisdictions it is a less serious summary offence;
- for a maximum penalty of 7 years imprisonment for graffiti at a school, with a maximum penalty of 5 years imprisonment for graffiti more generally;
- for a 2 year maximum term of imprisonment for the possession of a graffiti instrument.

¹ *Criminal Code Act 1899 sections 469 (9)(1); 469(9)(2), 469(10)*

² *Vagrants, Gaming and Other Offences Act 1931 – section 37C*

In contrast, the standard maximum term of imprisonment in other Australian states is 6 months. The effect of the stiff Queensland laws as a deterrent is impossible to accurately assess. In terms of raw numbers of graffiti incidences reported to police, in the 1997/98 financial year there were 3880 reports, while in 2001/02 the number was almost identical at 3888. Interestingly, the number spiked heavily in 1999/2000 to 6245. Although it must be noted these figures do not include data for all Brisbane police districts due to the creation of new police districts in the Brisbane metropolitan area.

However information has been provided to the Taskforce that in the year 1999/2000 there were 3731 reported graffiti offences in the Brisbane area and 3421 reported offences in the 2000/2001 year. There was a decrease in reports in the Brisbane Metro South area and a slight increase in the former Brisbane North Metropolitan Police District.

As is always the case with reported incidences of offences, it is difficult to know if the movement in numbers reflects in actual terms more or less occurrence of graffiti offending or other factors were afoot which lead to graffiti being reported more or less frequently to police. Suffice to say, the raw figures give little evidence to the theory that harsh Queensland laws of themselves are an effective strategy to combat graffiti.

The Taskforce

Although enforcement responses to graffiti were strengthened in Queensland in the late 1990's it was obvious even at that time enforcement alone was not enough in real terms to reduce or combat the incidence of graffiti. Public annoyance at the disfigurement of public spaces and the enormous cost of removing graffiti promoted further pressure "to do something" – hopefully constructive – to tackle graffiti.

It is recognised for the most part this pressure to do 'something' was (and continues to be) directed at local authorities. In 1997 the Queensland Department of Justice initiated a project to develop a model graffiti crime-prevention plan that could be implemented by local communities. This plan was based on four elements, namely, better reporting and recording systems; fast removal of graffiti; informing the public about prevention measures and the redirection of young graffitiists through a Legal Art program.

As a result of this project the Department produced the manual *Graffiti Crime Prevention Plan – a strategy for local communities to reduce graffiti vandalism* which was aimed at local Councils and has reportedly been widely distributed and still in use today. Through this manual and own initiative many local Councils throughout Queensland have been developing a co-ordinated, holistic, multi-pronged approach to tackling graffiti. This work is both recognised and commended.

However community concerns about the growing incidence of graffiti across Queensland were taken on board by the Queensland Minister for Police and Corrective Services the Honourable Tony McGrady.

In December 2001 the Minister for Police and Corrective Services, the Hon Tony McGrady MP, wrote to all 89 Members of the Queensland Parliament seeking expressions of interest to form a Parliamentary Taskforce to look afresh at tackling graffiti. Within a month 25 MPs had responded positively and now the Taskforce comprises 34 Members – over 1/3 of the entire Queensland Parliament. I was appointed by Minister McGrady as Chair of the Taskforce.

The terms of reference are quite wide, focussing on :-

- trends in the occurrence of graffiti in Queensland
- assessment of existing government and community programs
- adequacy of current laws
- educational and engineering avenues to discourage graffiti and/or make or it more difficult to apply or easier to remove.

The defining features of the Taskforce are its size and the diversity of the world views contained in its membership. The Taskforce is more than bi-partisan as it has within it all political parties represented in the Queensland Parliament including One Nation and Independent members. Interestingly, members brought to the table a range of what are believed to be community views and pre-conceived ideas about graffiti offending such as:

- the laws must be too lenient or judges and magistrates too soft on offenders and that is why there is a proliferation of graffiti in the community
- graffiti offenders are all young people and there needs to be more emphasis on making them responsible for their actions – we need to be more punitive to deter them from further offending;
- or alternatively, graffiti offenders are children or young adults who will simply going through a ‘phase’ and would grow out of it – so prevention programs rather than enforcement is the answer.

I think the success of the Taskforce has been to inform the Parliamentarians about the facts as best as they can be determined, and to foster a deeper and more layered appreciation that tough laws and more police is not a solution to a complex phenomenon such as graffiti. This appreciation has in turn been channelled by the parliamentarians back into their local communities.

Taskforce Themes

The Taskforce has entitled its report to Minister McGrady – ‘Law and Water’ – partnerships to reduce and prevent graffiti. The principal theme of the report is that graffiti happens because of complex inter-relationships between culture, alienation from social and economic institutions of some individuals and groups and straight out anti-social behaviour. A complex problem is rarely solved by a simple or black and white response. There is no simple solution to graffiti.

The law component of the Taskforce’s report reflects the examination of the current Queensland criminal laws and the particular issues involving public transport contained in regulations made under the Transport Infrastructure Act. While the Taskforce proposes some fine tuning recommendations to the law which I will touch on shortly, in the main the Taskforce has concluded that the current law is adequate.

The water component deals with the issues of education, engineering and community partnerships. It is about preventing and cleaning up graffiti and promoting the best ideas adopted by various agencies and local communities to the rest of the state.

The Taskforce Process

The Taskforce did not operate a public submission or hearing process but rather held targeted consultations with agencies such as the Queensland Police Service, Queensland Local Government Association, Queensland Rail and Industry representatives.

Consistent with its focus on Parliamentarians as community leaders, the Taskforce relied extensively on its own members reporting back on the programs and initiatives operating in their local electorates. This had the double advantage of engaging the Taskforce members and helped the learning process of those members whose initial reaction may have been a one-dimensional law and order approach.

In August 2002 the Taskforce delivered an interim report to the Minister. This interim report was built upon and expanded in the final report which is currently before Taskforce members in a final draft form.

On the Table for Discussion - Taskforce's Finding and Recommendations

The Taskforce presently has before it 7 recommendations to be proposed to Government. The first recommendations deal with the role of the Taskforce itself. The Taskforce asks that it continue in its operation to foster parliamentarians engagement in the local community initiatives to reduce graffiti and that the Taskforce might gain formal status as part of the parliamentary committee structure after the next State election due early next year.

While these recommendations may appear a little self-serving, I believe the Taskforce has been successful, if for no other reason than the fact that it has raised the sophistication of parliamentarians understanding of the issues at hand.

I commenced my remarks by commenting on how the last decades have seen retribution emerge as a dominant motivation in the criminal justice system – at least at a political level. In large part this has occurred because of a self reinforcing cycle of political gamesmanship and 'shock and awe' media reporting of crime. In a small way, the Taskforce has weakened this cycle by demonstrating in a practical concrete way, that harsh laws and long sentences do not solve everything and further state parliamentarians can take a leadership role in their local community to find better ways to tackle problems.

The next set of recommendations deal with the legal regime. As stated, Queensland laws are extensive and very strict when it comes to graffiti offending. The Taskforce does not believe major changes to the laws are necessary.

However there is an essential legal difficulty with establishing criminality in graffiti matters. Primary evidence, such as the evidence of witnesses is not readily available in most graffiti cases. Secondary evidence such as forensic and expert evidence has not been adduced to date in Queensland prosecutions.

The Australian and New Zealand Forensic Science Society has a project on the use of scientific techniques akin to handwriting identification which might link particular graffiti to an individual. It is in this regard that the Taskforce will possibly make its most controversial recommendation. The Taskforce has placed on the table the introduction of a rebuttable presumption that the presence of a 'tag' which has been proven to be that of a particular graffiti offender, be evidence that all graffiti featuring that 'tag' was carried out by that person.

If such a presumption was able to be introduced it would empower the police to target investigations and ease the evidentiary process in appropriate cases. Of course, such a change to the laws of evidence, could only be made if the forensic and scientific skills are at a point that provides reasonable certainty that a particular ‘tag’ is the work of the particular individual and has not been copied by another person.

The Taskforce is also considering recommending two provisions recently introduced into New South Wales law be adopted in Queensland. The first proposal is the prohibition of the sale of spray cans of paint to persons under the age of 18 years. Spray paint is a primary, but far from the sole, instrument used to apply graffiti.

Equally and in many ways more importantly, it is also the substance used in the practice of chroming. The practice of chroming – that is the inhaling of the propellant gases used in spray cans to get high – has been the subject of a coinciding report by the Queensland Commission for Children and Young People. As a result the Taskforce did not canvass chroming in any detail but it has noted the Commission’s recommendations on initiatives to better control the retailing of spray cans of paint.

It is considered that a ban on the sale of spray cans of paint to young people as occurs with a range of dangerous or potentially dangerous products most notably, cigarettes, is worthwhile both as a response to chroming and graffiti. Such a prohibition will need reasonable defence provisions for retailers.

The second New South Wales initiative which is recommended be adopted in Queensland is the empowerment of local government to remove graffiti from private property where:

- the property defaced by graffiti is visible from a public place;
- the removal work is undertaken from the public place i.e. the Council officer will not be able to enter private land to remove the graffiti without the landowners/occupiers consent.

While a modest measure, it does improve the capacity of local initiatives to remove graffiti. It is in this regard that an initiative from the Taskforce’s earlier work is already in operation.

The Taskforce in conjunction with Queensland Department of Corrective Services has seen some 4 community clean-up trailers being put into operation. The trailers constructed by prisoners at the Woodford Correctional Centre have been adopted by a community group as nominated by their local MP. The local member then helps co-ordinate sponsorship and donations for the trailers. To date, the trailers have been placed in the areas of Townsville, Caboolture, North Brisbane and Springwood. Another 8 trailers will become available during the balance of this year. Sponsorship has come from businesses such as Watty’s paints and Bunnings. The trailers provide a very practical way in which community partnerships can be built to tackle graffiti.

Which takes me to the final and most important recommendation the Taskforce has put on the table for consideration and that involves the enhancing of the holistic co-ordinated approach to tackling graffiti in Queensland. Until recent times, the Queensland response to the proliferation of graffiti in its current hip hop subculture form focussed mainly on law enforcement for both punishment and deterrence. However inline with other jurisdictions it has been recognised that graffiti vandalism is a multi-faceted quite complex issue combining elements of culture, community responsibility as well as law enforcement. It requires a number of strategies – different approaches and ideas – to try to contain and hopefully reduce its grip in the community.

Many local Councils have put in place or are in the process of adopting graffiti management plans incorporating a number of strategies and approaches. Queensland Rail, the State's prime target for graffiti, has a very comprehensive graffiti management strategy covering both enforcement and preventative measures. Many community groups and individuals have embraced rapid removal responses in their local area to keep their neighbourhood clean. All in all it can be said there are strong partnerships at work across Queensland to combat community disfigurement caused by graffiti.

But in the view of the Taskforce what we lack here in Queensland is an overarching framework and advisory body at a State level. It is envisaged such a body would:

- identify gaps in existing approaches
- collect and analyse data about graffiti offending so as to obtain a clearer picture of the profile of graffiti offenders and the scope and extent of graffiti in Queensland and hence ensure programs, initiatives and strategies are properly targeted
- undertake research
- monitor, evaluate and/or assess current programs and strategies and report on their effectiveness
- provide feedback and advice to stakeholders on best practice and any emerging strategies or issues to tackle graffiti
- liaise with other jurisdictions
- guide government departments and agencies on graffiti prevention measures especially in relation to urban design.

By establishing a dedicated graffiti reduction strategy committee with a wide range of representation and the role of collecting, evaluation and disseminating information from the local grass-roots level up to it is believed we can strengthen the fight against graffiti.