



Speech by

Ms Grace Grace

MEMBER FOR BRISBANE CENTRAL

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CRIMINAL CODE AND OTHER ACTS (GRAFFITI CLEAN-UP) AMENDMENT BILL

Ms GRACE (Brisbane Central—ALP) (9.03 pm): I rise to speak against the Criminal Code and Other Acts (Graffiti Clean-up) Amendment Bill introduced as a private member's bill on 27 February this year. This bill aims to amend the Criminal Code, the Summary Offences Act 2005 and the Regulatory Offences Act 1985 to make community service clean-up orders for all graffiti offences compulsory for all offenders in addition to any other penalty issued by the courts. I oppose this bill for a number of reasons. However, my opposition should not be construed as me supporting graffiti offenders or me not agreeing that unwanted graffiti can be most destructive to property and place and can be a great concern to the victims often left with the mess.

Graffiti is far from being a new phenomenon, with suggestions that it may date back as far as 30,000 years ago. I can also speak firsthand because my fence has often been the victim of graffiti, and I can assure the House that it was not welcome at the time. Having an inner-city electorate also seems to bring with it a propensity for graffiti to occur more regularly throughout the electorate, but I am aware that probably no area is immune.

The reason I do not support this bill is that I believe that currently the Queensland legislation contains strong enough penalties for graffiti offences, including the ability to order community service. I reject a one-size-fits-all mandatory sentencing, and I have always supported that decisions regarding appropriate penalties should rest with the courts which have a wide range of sentencing options available and the necessary skills to determine the right remedy according to the circumstances of each case.

I question the need to prescribe a penalty when quite clearly the courts already have a capacity to make clean-up orders in addition to any other sentence imposed. The only difference between what we currently have in the law and what this bill proposes is that we take away from the courts the ability to determine a clean-up order on a case-by-case basis, instead opting to dictate what the courts must do. Whether the opposition thinks this is somehow a greater deterrent or whether it knows better than the courts or whether it believes that somehow courts are lacking the necessary skills to determine appropriate penalties are puzzling questions that I struggle to answer.

Mandating a clean-up order also ignores the circumstances of the case or the offender involved. For example, currently section 101 of the Penalties and Sentences Act 1992 provides that a court can only make a community service order for an offender if it is satisfied that the offender is a suitable person to perform community service. Also, section 106 requires the offender to agree to the making of the order and to agree to comply with it and if the offender does not agree the order cannot be made.

I believe there are some very real reasons for requiring that the offender be a suitable person to perform community service and to consent to the order before it is made. Unfortunately, the offender may be suffering from an illness or a disability or a mental health condition that renders them incapable of complying with the order. Equally, the complainant, who could be a property owner or business owner, may not wish to have the offender attending the location for a number of reasons—one being that the graffiti

may have already been removed by the time it has gone to court. In addition, it may not be safe to send an offender who has a mental condition, for example, to the graffiti rail yards or to send an offender with a physical disability to clean up a person's property where clearly they would be unable to do the job. It just does not make sense, but under this bill the courts would have no option but to mandate the penalty—which I believe is just plain crazy.

Mandating a clean-up order in these circumstances without taking into account safety issues, the property owner's wishes or the capacity of the offender is deleterious in the extreme and should not be supported. There is no doubt in my mind that the sentencing judge or magistrate is the most appropriate person to determine the suitable sentence after considering all of the facts, including the offender's circumstances and, where appropriate, the complainant's wishes.

Although we may not all agree, there actually are some people in our community who view some graffiti as art and may not wish to have it removed. For example, upon renovating my most favourite building in Brisbane, the Powerhouse, much of the graffiti has been left in situ as part of the renovations and I must admit that I and others find it most appealing. Had this order been in place, the character of the building where the graffiti has become an integral part would have been lost forever. In fact, examples of graffiti have even been found at Pompeii dating from around 79 AD and I understand they are a most cherished part of the ruins.

Overall, I accept that there are cases where repeat offenders who cause significant damage to property and great cost to taxpayers deserve the only appropriate sentence, which may be imprisonment. I would not want to impede this sentencing with a clean-up order for fear of avoiding issues of double punishment.

I firmly believe that the current laws are quite adequate and enable the courts to make appropriate decisions depending on the circumstances. I note that the parliamentary graffiti task force report of August 2003, which comprised members of all political parties represented in this House, ultimately concluded that the current laws on graffiti are adequate. The chair of the task force, the Hon. Linda Lavarch, noted there was little evidence that harsh laws of themselves are an effective strategy to combat graffiti, and I include mandatory sentencing in that statement. It is for all these reasons and the fact that the bill is practically unworkable, and in some cases most inappropriate, that I do not support this bill.