

Graffiti Control Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Graffiti Control Act 2008* (the **principal Act**):
 - (i) to create new offences relating to the supply of spray paint cans to children and the possession of spray paint cans by children, and
 - (ii) to increase the penalties for certain existing graffiti offences, and
 - (iii) to introduce a scheme of community clean up orders, under which an offender fined for a graffiti offence can be directed by a court to perform community clean up work in order to satisfy the fine, and
 - (iv) to make other consequential and minor amendments, and
- (b) to amend the *Graffiti Control Regulation 2009* to enable certain local council employees to issue penalty notices for certain offences under the principal Act, and
- (c) to amend the *Rail Safety Act 2008* to give rail safety officers the power to direct a person to state the person's name and address if the officer finds a person committing an offence against the principal Act, or reasonably suspects the person has committed an offence against the principal Act, and
- (d) to amend other Acts as a consequence of the introduction of the scheme of community clean up orders.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. Most amendments commence on the date of assent. Provisions relating to community clean up orders will commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Graffiti Control Act 2008 No 100

New graffiti related offences

Schedule 1 [5] creates 2 new graffiti offences. The offences restrict the supply of spray paint cans to persons under the age of 18 years and the possession of spray paint cans by persons under the age of 18 years. It is already an offence under the principal Act to sell a spray paint can to a person under the age of 18 years.

Under proposed section 8A, a person who supplies a spray paint can to a person under the age of 18 years will be guilty of an offence with a maximum penalty of \$1,100. It will be a defence (that the person charged must prove) that the person who supplied the spray paint can believed on reasonable grounds that the recipient intended to use the spray paint can for a defined lawful purpose, being the lawful pursuit of an occupation, education or training. It will also be a defence if the person charged proves the supply occurred in a public place and the person believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of the place where the supply occurred for another defined lawful purpose. It will also be a defence if the person charged proves the supply occurred in a private place and the person believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of the place where the supply occurred for an activity that does not constitute an offence against the principal Act or any other law.

Under proposed section 8B, a person under the age of 18 years who is in possession of a spray paint can in a public place is guilty of an offence with a maximum penalty of \$1,100 or 6 months imprisonment. It will be a defence (that the person charged must prove) that the person had the spray paint can in his or her possession for a defined lawful purpose, being the lawful pursuit of an occupation, education or training. It will also be a defence if the person charged proves that the person had the spray paint can in his or her possession for another defined lawful purpose and was at or in the immediate vicinity of the place where the spray paint can was being used or intended to be used for that defined lawful purpose. A court that convicts a person under the proposed section must not sentence the person to imprisonment unless the person has previously been convicted of a graffiti offence on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

A **defined lawful purpose** is defined as:

- (a) the lawful pursuit of an occupation, education or training, or
- (b) any artistic activity that does not constitute an offence against the principal Act or any other law, or
- (c) any construction, renovation, restoration or maintenance activity that does not constitute an offence against the principal Act or any other law, or
- (d) any other purpose authorised by the regulations.

A **public place** means a place or part of premises that is open to the public or used by the public, but does not include the premises of a school or other educational establishment. A **private place** means a place that is not a public place.

Schedule 1 [6] is a consequential amendment. At present, a police officer is authorised to confiscate a spray paint can in the possession of a person in a public place if the officer reasonably suspects the person is under the age of 18 years, unless the person satisfies the officer that the person has the spray paint can in his or her possession for a purpose that is not unlawful. Under the new provisions of the principal Act, persons under the age of 18 years will only be permitted to be in possession of a spray paint can in a public place in defined circumstances. The amendment allows the police officer to confiscate the spray paint can unless the person satisfies the officer that his or her possession of the can does not constitute an offence under the new provisions.

Schedule 1 [4] is a consequential amendment to a Part heading.

Increase in penalties for existing graffiti related offences

Schedule 1 [2] increases the maximum penalty for the existing offence of damaging or defacing property with a graffiti implement from 6 months to 12 months imprisonment.

Schedule 1 [3] increases the maximum penalty for the existing offence of possessing a graffiti implement with the intention that it be used to damage or deface property from 3 months to 6 months imprisonment.

Community clean up work

Schedule 1 [7] inserts proposed Part 3A into the principal Act, which enables a court that imposes a fine on a person for an offence under the principal Act (a **graffiti offence**) to make an order requiring the person to perform community clean up work in order to satisfy the amount of the fine. Community clean up work will be any community service work under (in the case of a child offender) the *Children (Community Service Orders) Act 1987* or (in the case of an adult offender) the *Crimes (Administration of Sentences) Act 1999* that is approved as community clean up work by the Minister administering the relevant Act. The community clean up work that an offender is directed to do by the officer assigned to the offender under the *Children (Community Service Orders) Act 1987* or the *Crimes (Administration of Sentences) Act 1999* (the **assigned officer**) must, if practicable, include at least 2 hours participation in a graffiti prevention program.

A court must not make a community clean up order unless satisfied that the offender is a suitable person for community clean up work and, if the offender is a child, is sufficiently mature to perform community clean up work, and that community clean up work is available in the area where the offender lives.

Once a court makes a community clean up order, it must give written notice of the order to the offender. In the case of an adult offender, notice of the order must also be given to the Commissioner of Corrective Services. In the case of a child offender, notice of the order must also be given to the Director-General of the Department of Human Services and, if the order is made by a court other than the Children's Court, to the registrar of the Children's Court. The notice must include where the offender must present himself or herself so that the administration of the order can begin and the period in which the offender must present himself or herself for that purpose.

A court that makes a community clean up order must explain, in language likely to be readily understood by the offender, the requirements of the order, the consequences of not complying with those requirements and the fact that the offender may pay the fine instead of performing community clean up work.

Satisfaction of fines and community clean up orders

One hour of community clean up work performed by an offender is equivalent to \$30 of the amount of fine. If an offender complies with the community clean up order by completing the required number of hours of work, the fine is taken to be satisfied. If an offender performs part of the work under the order, the fine is taken to be satisfied by the amount calculated at \$30 for each hour of community clean up work actually performed. An offender may also choose to pay the fine, or the balance of the unpaid fine, instead of completing the community clean up work. The community clean up order ceases to be in force if the offender pays the fine or the balance of the fine.

Revocation of community clean up orders

A court may revoke a community clean up order, after it has received a report from the offender's assigned officer, if it is satisfied that the offender has failed to report for work under the order within 3 months after being required to do so, has failed to report for work within any period of 3 months, has failed to comply with the order, is not capable of performing the work or is not suitable to be engaged in work under the order. A court may also revoke a community clean up order if the offender so requests and the court is satisfied that it would be in the interests of justice to do so.

A community clean up order is also revoked if the finding of guilt, conviction or sentence for the graffiti offence in respect of which the order was made is quashed, annulled or set aside. If a fine imposed by a court is varied, the court that varies the fine may revoke or vary a community clean up order made in respect of that fine.

Notice of the revocation or variation of a community clean up order must be given to the offender and to the offender's assigned officer. If the court that revokes an order in respect of a child offender is not the Children's Court, notice must also be given to the registrar of the Children's Court.

Other provisions

The *Children (Community Service Orders) Act 1987* applies, with some exceptions, to a community clean up order made in respect of a child offender in the same way as it applies to a children's community service order made in respect of a person under that Act. The *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* apply, with some exceptions, to a community clean up order made in respect of an adult offender in the same way as they apply to a community service order made in respect of a person under the *Crimes (Sentencing Procedure) Act 1999*.

There is no right to appeal against the making of a community clean up order, a failure to make a community clean up order or the revocation or variation of a community clean up order.

The functions of a court in relation to the making of a community clean up order may be exercised by the registrar of a court, if the offender consents to the making of the order. The functions of a court in relation to the revocation of a community clean up order may be exercised by the registrar of a court. The regulations may make further provision for or with respect to community clean up work and community clean up orders and may increase the amount of \$30 (the amount equivalent to one hour of community clean up work performed by an offender).

Schedule 1 [1] inserts standard definitions of **exercise** and **function**, which are applicable to the new provisions relating to community clean up orders.

Schedule 1 [8] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [9] provides for the application of the amendments made by the proposed Act.

Schedule 2 Amendment of other legislation

Schedule 2.1 and 2.3 amend the *Children (Community Service Orders) Act 1987* and the *Crimes (Administration of Sentences) Act 1999* as a consequence of the scheme for community clean up orders. The amendments remove cross-references from particular provisions of those Acts that will apply to community clean up orders, so as to avoid any confusion about whether the provisions apply to community clean up orders.

Schedule 2.2 amends the *Children (Criminal Proceedings) Act 1987* to make it clear that the Children's Court has power to make a community clean up order in addition to any other powers it has under that Act.

Schedule 2.4 amends the *Graffiti Control Regulation 2009* to allow certain local council employees to issue penalty notices for offences relating to the sale or display of spray paint cans. Currently, only police officers and investigators within the meaning of the *Fair Trading Act 1987* may issue penalty notices.

Schedule 2.5 amends the *Rail Safety Act 2008* to give rail safety officers the power to direct a person to state the person's name and address if the officer finds a person committing an offence against the *Graffiti Control Act 2008*, or reasonably suspects the person has committed an offence against that Act.