

## Second Reading

**The Hon. JOHN HATZISTERGOS** (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [6.19 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Graffiti Control Amendment Bill 2009. The purpose of the bill is to give effect to the legislative aspects of the New South Wales Government's graffiti action plan that the Premier announced on 8 November 2009. It will also create a scheme of community clean-up work for graffiti offenders. Graffiti is not a victimless crime and is not simply a costly eyesore; it makes people feel unsafe and the community has had enough. Portions of the bill draw on the evidence-based research done by the Department of Justice and Attorney General on graffiti offenders in the report entitled "The motivations and modus operandi of persons who do graffiti". The report on the interviews with 52 offenders found that while most offenders do graffiti either in the pursuit of fame or recognition or for the adrenaline rush that doing graffiti gives them, graffiti offenders are a heterogeneous group; and while some offenders are opportunistic in their illegal activities, around a third of those interviewed stated that they were dedicated members of a crew or semi-organised group, which can range from 10 members to up to 40 members.

Given that the current penalties do not appear to be a deterrent to these serious graffiti offenders, there is a need to increase their severity. Moreover, compared with other jurisdictions in Australia, the penalties for marking graffiti and carrying a graffiti implement with intent in New South Wales are at the lower end of the scale. However, the Government is also focusing its energies on intervening early with graffiti offenders through a range of options, especially youth justice conferences. The report also identified that the current sale restrictions under the Graffiti Control Act 2008 had limited the ability of offenders to purchase spray paint and has led to graffitiists recruiting adults to purchase the cans on their behalf. The Office of Fair Trading has indicated that current restrictions on the retailing of spray paint have been adhered to. An audit of approximately 800 stores by the Office of Fair Trading found 100 per cent compliance with obligations regarding the display and sale of spray paint cans. Some offenders said that older friends or family members were instead purchasing spray paint on their behalf, hence the need for a secondary supply offence, which I will come to shortly. I now turn to the detail of the bill.

The bill creates two new graffiti offences. The offences further 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. 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 is a defence to this offence, proof of which is on the person who supplied the spray paint, if, first, the person believed on reasonable grounds that the spray paint was going to be used by the person to whom the paint was given for a defined lawful purpose; and, secondly, where the supply occurred in a public place, the person believed that the spray paint was going to be used by the person to whom the paint was given for another defined lawful purpose.

Purposes or uses of graffiti are specifically defined in the bill as lawful for these offences and are, first, the lawful pursuit of an occupation, education or training; secondly, any artistic activity that does not constitute an offence against this Act or any other law; and, thirdly, any construction, renovation, restoration or maintenance activity that does not constitute an offence against this Act or any other law. It is also a defence to this offence if the supply occurred in a private place and the person believed that the spray paint was going to be used by the person to whom the paint was given for any purpose that is not against the law at or in the immediate vicinity of that private place. To illustrate, this offence makes it legal for a parent to give a child spray paint so he or she can help paint the outside shed, but not to allow the child to go down the road with his or her friends with the can.

Under proposed section 88 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 six months imprisonment. It will be a defence that the person had the spray paint can in his or her possession for a defined lawful purpose, being education or employment. It will also be a defence if the person had the paint in his or her possession for one of the other defined lawful purposes, such as a lawful artistic activity, but only at the place or in the immediate vicinity of the place where it was being used or it was intended to use the spray paint. In order to ensure consistency in the principal Act, schedule 1 [6] amends the existing spray paint confiscation powers to allow a 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.

In addition to creating these two new offences, the bill creates a scheme of community clean-up work. Courts which impose fines for graffiti offences will be able to order that offenders pay off those fines by way of community clean-up work at the rate of \$30 per hour. It will also be open to offenders to volunteer to do this work instead of paying a fine. In the latter case, a community clean-up order can be made by a registrar. The orders can only be made after consultation with Juvenile Justice in the case of children and Corrective Services in the

case of adults to ensure that the person is suitable to do the work. Although these orders draw heavily on the statutory machinery of community service orders, community clean-up orders are a distinct type of order which attaches to a fine.

A court must first come to the conclusion that a fine is the appropriate option for an offender, as against other options, such as prison or a community service order, before deciding that it is appropriate for the fine to be paid by way of community clean-up orders. Under the community clean-up order, an offender must, if practicable, participate for at least two hours in a graffiti prevention program. The program will include personal development, education or another program the object of which is to prevent offenders from engaging in unlawful graffiti activities. A court can revoke the order if an offender fails to comply or is unable to comply. It can also revoke the order if the offender requests and it is satisfied that it would be in the interests of justice to do so. Upon revocation of the order, the offender must pay the remaining amount of his or her fine.

An offender need not be present when the order is revoked, and a registrar can sanction revocation. However, notice of the intention to revoke the order and an opportunity to put submissions must be given before an order is made. It is envisaged that the majority of revocations will occur in chambers under the hand of a registrar. However, should a person wish to appear before the court and make submissions as to why the order should not be revoked, natural justice demands that he or she be given the opportunity to do so. There is no right of appeal against the decision to make or revoke a community clean-up order. However, the effect of proposed section 9L is to allow a court which hears an appeal against the severity of the fine which underlies the order, or any other appeal which affects that fine, to vary or quash that order as the case may require. Appeal courts which re-sentence an offender to a fine will also be able to make the order.

In addition to these two key changes, the bill makes a number of other amendments to further criminalise graffiti behaviours. Schedule 1 [2] increases the maximum penalty for the existing offence of damaging or defacing property with a graffiti implement from six months to twelve 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 three months to six months imprisonment. Currently only Police and Fair Trading investigators may issue penalty notices with respect to the sale of spray paint cans.

Schedule 2.4 amends the Graffiti Control Regulation 2009 to allow certain local council employees to also issue such 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 that the person has committed an offence against that Act. This power accords with other powers that rail safety officers enjoy in relation to antisocial behaviour on trains and related premises. The bill also makes other consequential and minor amendments. The tough, extraordinary measures in this bill leave no doubt as to the Government's view of people who deface property and how they deserve to be treated. I commend the bill to the House.