

## Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

(a) to consolidate existing graffiti laws (particularly the provisions of the Summary Offences Act 1988 that create graffiti-related offences and regulate the sale of spray paint) into a specific Act dealing with graffiti,

(b) to replicate the scheme currently set out in sections 67A–67C of the Local Government Act 1993 for the carrying out of graffiti removal work by local councils,

(c) to enable penalty notices to be issued for the offence of selling spray paint cans to minors and for the offence relating to the unsecured display by retailers of spray paint cans.

### Outline of provisions

#### Part 1 Preliminary

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

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Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. Most of the defined terms are taken from the Summary Offences Act 1988. The new definition of graffiti implement covers not only spray paint, but also marker pens and other implements (such as etching implements) designed or modified to produce a mark that is not readily removable.

#### Part 2 Graffiti related offences

Clause 4 makes it an offence to intentionally damage or deface any premises or other property by means of a graffiti implement. The new offence is based on section 10A of the Summary Offences Act 1988 which is limited to damage or defacing by means of spray paint only. The maximum penalty remains the same (20 penalty units or imprisonment for 6 months).

Clause 5 makes it an offence to possess a graffiti implement with the intention that it be used to damage or deface property. The new offence is based on section 10B of the Summary Offences Act 1988 which is limited to possession of spray paint only. The maximum penalty remains the same (10 penalty units or imprisonment for 3 months).

Clause 6 replicates the offence under section 9 of the Summary Offences Act 1988 of putting up posters on premises, or intentionally marking premises with chalk or other material, without the consent of the occupier and so that the poster or marking can be seen from a public place. The maximum penalty remains the same (4 penalty units).

#### Part 3 Sale and confiscation of spray paint cans

Clause 7 makes it an offence to sell a spray paint can to a person under the age of 18 years. The new offence replicates section 10C of the Summary Offences Act 1988 (including the maximum penalty of 10 penalty units).

Clause 8 makes it an offence for retailers not to properly secure spray paint cans that are displayed in shops. The new offence replicates section 10D of the Summary Offences Act 1988 (including the maximum penalty of 10 penalty units).

Clause 9 authorises police officers to confiscate spray paint cans in the possession of minors in public places (unless the possession is for a purpose that is not unlawful). The new provision replicates section 10E of the Summary Offences Act 1988.

#### Part 4 Graffiti removal work by local councils

Clause 10 provides that certain expressions in the proposed Part have the same meanings as in the Local Government Act 1993.

Clause 11 provides that a local council may, by agreement with the owner or occupier of any private land, carry out graffiti removal work on the land.

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Clause 12 enables a local council, without the agreement of the owner or occupier of any land, to carry out graffiti removal work on the land if the graffiti concerned is visible from a public place. Any such work may only be carried out from a public place and the local council is to bear the cost of the work and pay compensation for any damage caused in carrying out the work.

Clause 13 requires a local council to keep a register of the graffiti removal work it carries out in accordance with the proposed Part.

Part 5 Miscellaneous

Clause 14 provides that it is a defence to a prosecution for an offence under the proposed Act if the act concerned was done with lawful authority.

Clause 15 enables a court to order a person to perform community service work as an alternative to fining or imprisoning the person for a graffiti-related offence under proposed section 4 or 5.

Clause 16 enables penalty notices to be issued for the offences under the proposed Act relating to the sale of spray paint cans to minors and the display of spray paint cans by retailers.

Clause 17 replicates section 13 of the Summary Offences Act 1988 which provides for a charge to be adjourned or dismissed by a court if particulars relating to the offence concerned are not provided to the defendant.

Clause 18 enables a court to require a person who is convicted of an offence under the proposed Act to pay for the cost of repairing any damage caused by the act constituting the offence.

Clause 19 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 20 provides that proceedings for offences under the proposed Act may be dealt with summarily before the Local Court.

Clause 21 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

Clause 22 is a formal provision that gives effect to the amendments to the legislation set out in Schedule 2.

Clause 23 provides for the review of the proposed Act in 3 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, provision is made for the continuation of anything done by a local council under the existing graffiti removal scheme under the Local Government Act 1993.

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Schedule 2 Amendment of other legislation

Schedule 2.1 repeals the offence contained in the Crown Lands (General Reserves) By-law 2006 of defacing Crown reserves with graffiti.

Schedule 2.2 provides that penalty notices issued under the proposed Act are penalty notices for the purposes of the Fines Act 1996 and may be enforced in accordance with that Act.

Schedule 2.3 amends the Local Government Act 1993 to repeal provisions relating to graffiti removal work carried out by local councils and to make consequential amendments.

Schedule 2.4 modifies the offence provision under the Rail Safety (General) Regulation 2003 relating to graffiti and vandalism so that it no longer refers to the defacing of property. However, an authorised officer will be able to direct a person who is damaging or defacing property by means of a graffiti implement on a train or railway land to leave the train or land.

Schedule 2.5 amends the Summary Offences Act 1988 to repeal, as a consequence of the proposed Act, provisions relating to graffiti and spray paint cans.

Schedule 2.6 makes consequential amendments to the Summary Offences Regulation 2005.