

GRAFFITI CONTROL BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.52 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Graffiti Control Bill 2008, an important initiative in the fight against Graffiti and Graffiti vandals in New South Wales. For the first time, New South Wales will have one Act covering every aspect of Graffiti Law ranging from graffiti offences through to the regulation of the possession and sale of spray paint.

The Graffiti Control Bill consolidates existing graffiti related offences into one Act. It extends the reach of graffiti offences to cover more than just those offences that involve the use of spray paint. Graffiti is often done with a variety of different tools and the inclusion of a new offence of the possession of graffiti implements will capture the inappropriate use of these tools. It will also be an offence to damage or deface any property or premises with any graffiti implement. That includes spray cans—it also includes marker pens, etching tools and anything else designed or modified to produce a permanent mark.

The existing offence of possessing spray paint with the intention that it be used to damage or deface property or premises will also be expanded to include all graffiti implements.

The bill provides new powers to ensure that laws regulating the sale and display of spray paint are enforced. For the first time, police and other authorised officers will be given the power to issue penalty notices to retailers for breaching provisions concerning the sale and display of spray paint.

I now turn to the detail of the bill.

Part 1 sets out matters preliminary to the bill. Of note is the definition of graffiti implement set out in clause 3. Graffiti implements are defined to include spray paint, any marker pen, including white board markers and permanent markers, and other implements designed or modified to produce a mark. Graffiti implements include implements designed to be used for etching and other implements which make marks which are not easily removed.

Part 2 of the bill sets out graffiti related offences. These offences are based on those that currently exist in the Summary Offences Act. However, the offences have been updated and in some cases expanded by this bill. The language of the offences has been modernised, for example, by removing the word wilfully and replacing it with the word intentionally. The ambit of the offences has been increased and I will now go into more detail about how that has occurred.

Clause 4 makes it an offence to intentionally damage or deface any premises or other property by means of a graffiti implement. The offence is based on section 10A of the Summary Offences Act 1988, which is repealed by this bill. However it is different in that the new offence is not limited to damage caused by spray paint but rather encompasses damage caused by a variety of instruments. It captures offending behaviour such as etching on buses and trains and graffiti to trees.

In the past most graffiti offences have been charged as property damage offences under the Crimes Act 1900. This has made it difficult to distinguish graffiti vandalism from other damage offences. It is expected that graffiti will be charged under the new Act rather than other Acts such as the Crimes Act. This will have the benefit of allowing graffiti offences to be distinguished from other property offences and hence provide important data and statistics to inform graffiti policy into the future.

Clause 5 creates an offence of possessing a graffiti implement with the intention that it be used to damage or deface property. The offence is based on section 10B of the Summary Offences Act 1988, which is repealed by this bill. Like clause 4, the ambit of this offence has been widened to include all

graffiti implements.

Clause 6 sets out the offence of putting up posters on premises, or marking premises with chalk or other material, without the consent of the occupier. The clause essentially replicates the existing section 9 of the Summary Offences Act 1988, which is repealed by this bill. This offence also captures other types of marking and bill-posting, which are outside the ambit of the graffiti offence created by clause 4.

Part 3 of the bill sets out provisions concerning the sale and confiscation of spray cans. Each of these provisions is almost identical to provisions in the Summary Offences Act 1988, which are repealed by this bill.

Clause 7 makes it an offence to sell spray paint to persons under 18 years of age.

Clause 8 requires retailers to properly secure spray paint cans and provides for punishment if they fail to do so.

Clause 9 authorises police officers to confiscate spray paint cans in the possession of children under the age of 18, unless they have possession of the cans for a purpose which is not unlawful.

Part 4 of the bill replicates provisions, which are repealed by this bill, in the Local Government Act 1993 concerning graffiti removal by local councils.

This Part allows for a local council, with or without the agreement of the owner or occupier of any land, to enter that land and remove the graffiti. Where the owner or occupier has not consented, the Council can only do so if the graffiti is visible from a public place.

Clause 13 requires local councils to keep a register of graffiti removal work carried out under Part 4 of the bill.

Part 5 of the bill sets out miscellaneous provisions concerning the operation and enforcement of the Act.

Clause 14 provides for a general defence of lawful authority. A person can defend himself or herself against any of the criminal provisions of the Act if they can satisfy a court that they committed an offence with lawful authority. The defence is identical to that available for all offences in the Summary Offences Act.

Clause 15 provides that a court can sentence a person who has committed an offence under clauses 4 and 5 to community service and, as part of that order, require that person to clean up graffiti. The clause consolidates the provisions formerly contained in the Summary Offences Act in relation to the corresponding graffiti offences in that Act.

Clause 16 provides for police officers and other persons prescribed by regulation to issue penalty notices for offences relating to the sale and display of spray paint (clauses 7 and eight of this bill).

Clause 17 copies a procedural requirement set out in the Summary Offences Act. Essentially, the clause requires that a defendant is provided with sufficient details of what he or she is alleged to have done so as to be able to defend himself.

Clause 18 empowers a court to order compensation for damage done in the course of committing or as a result of committing an offence under the Act.

The bill also repeals other laws concerning graffiti which are now covered by offences in the Graffiti Control Act. This Government is committed to controlling and reducing graffiti in New South Wales.

I commend the bill to the House.