

GRAFFITI CONTROL AMENDMENT BILL 2013

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Bill introduced on motion by Mr Greg Smith, read a first time and printed.**Second Reading**

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.20 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Graffiti Control Amendment Bill 2013. The purpose of the bill is to make amendments to the Graffiti Control Act 2008 to implement a number of recommendations made by the statutory review of the Act to improve its operation. In 2008 Parliament passed the Graffiti Control Act with a view to consolidating a number of aspects of graffiti law, including graffiti offences, regulation of graffiti implements and providing additional sanctions for graffiti offenders. In addition to consolidating the law, the Act was also intended to meet the goals of extending offences relating to graffiti implements, improving the collection of statistics on graffiti and implementing a regime of community clean-up work for graffiti offenders.

As members will recall, the Government made a number of amendments to the Graffiti Control Act in 2012. Those amendments were part of the Government's election promise to tackle graffiti in the community. The amendments included requiring that young offenders be brought before a court and strengthening the court's capacity to make community clean-up orders. Section 23 of the Act required that it be the subject of a statutory review after three years in operation. That review has now been completed by my department. The review sought to determine whether the policy objectives of the Graffiti Control Act remain valid, and whether its terms are appropriate for achieving its objectives. I note that the review did not consider the amendments to the Act made in 2012. The review found that, while some objectives of the Act are being met, its primary objective of having all graffiti offences dealt with under a single Act is not being achieved adequately.

The review found that, despite Parliament's intention that graffiti offences should be charged under the Graffiti Control Act 2008, this was not always reflected in practice. Charges for graffiti offences are still frequently being brought under section 195 of the Crimes Act 1900, which is the offence of destroying or damaging property, rather than the Graffiti Control Act 2008. As a result, the review noted that courts hearing graffiti charges regularly do not have access to the community clean-up provisions set out in the Act because these are not available for matters charged under section 195 of the Crimes Act. The review also noted concerns about the responsiveness of the existing offence provisions in the Act to emerging forms of graffiti. The review recommended reform of the graffiti offences in the Act to address those concerns and to encourage the charging of graffiti offences under the Act. It also recommended improvements to the community clean-up scheme set out in the Act.

This bill supports the Government's commitment to reduce graffiti vandalism and to ensure that graffiti offences are charged appropriately. The bill implements the legislative recommendations of the statutory review. The bill does not create any new significant categories of criminality. It restructures and simplifies existing offences in the Act. This will enable accurate statistics on graffiti offending to be collected so that future graffiti policies

can be based on evidence rather than perceptions about the level of graffiti vandalism in New South Wales. The amendments are also intended to ensure that all forms of graffiti, now and in the future, can be charged under this Act. I will now outline each of the amendments in turn. Item [1] of schedule 1 to the bill contains new section 4, which creates a new two-tiered offence of marking premises or property, including a basic offence and an aggravated version. This provision will consolidate and remake the existing offences of marking graffiti and damaging or defacing property contained in sections 4 and 6 of the Act.

The basic offence prohibits a person from intentionally marking any premises or property unless the person has the consent of the occupier or owner, or has a reasonable excuse for doing so, proof of which lies on the person. The maximum penalty will be a fine of four penalty units, which is \$440. This is the same maximum penalty applicable to the basic marking premises offence currently contained in the Act. The basic marking offence is currently found in section 6 of the Act. The remade offence removes the requirement that the marking be made within public view. The statutory review recommended that this element be removed because the real criminality of marking offences is the lack of consent of the owner or occupier, not the public nature of the mark. It is necessary to note that the removal of the public view requirement may result in graffiti done in private premises, for example by a tenant, being an offence under the Graffiti Control Act 2008. This type of offending can already be prosecuted under section 195 of the Crimes Act, so this is not criminalising behaviour that is not already criminal. If the damage is graffiti, then it should be charged under the Graffiti Control Act as intended by Parliament when the Act was passed.

The remade offence in new section 4 also removes the requirement that the marking be made by chalk, paint or any other material. This was also a recommendation of the statutory review, which noted that the existing provisions may not be flexible enough to capture new forms of graffiti that emerge. The intent of this new section is to capture and punish graffiti offences regardless of how the marking is made and regardless of whether it can be seen by the general public. New section 4 (2) creates the aggravated marking offence, which is made out where a person has committed the basic marking offence either by using a graffiti implement or by marking in such a way that the mark is not readily removable by wiping or use of water or detergent. The maximum penalty will be 20 penalty units, being a fine of \$2,200 or 12 months imprisonment. This is equivalent to the existing maximum penalty for the offence of damaging or defacing property in the Act, which is being remade as the aggravated offence.

The aggravated offence recognises that markings that are not readily removable or that are made by graffiti implements are serious. The circumstances of aggravation are alternative to each other; therefore, it will be sufficient to prove that either is present, not both. This amendment will mean that the offence covers new graffiti techniques such as acid etching, which does not use a graffiti implement but results in a mark that cannot be easily removed. There will be some overlap between the offending behaviour that the marking offences in new section 4 capture and that captured by section 195 of the Crimes Act, as is the case with the current provisions. However, the offences have been made deliberately broad so that graffiti offences can be charged appropriately under the Act. The proposed offences are also flexible enough to capture new graffiti techniques.

New section 4 (4) includes the existing restraint on imposing a term of imprisonment. That provision provides that a court cannot sentence a person to imprisonment unless it is satisfied that the person has committed a number of graffiti offences or offences involving possession

of a graffiti implement so as to be a serious and persistent offender and likely to commit such an offence again. The proposed new section 4 will ensure that graffiti offences are flexible enough to respond to new methods of marking graffiti and should encourage police to charge under the Graffiti Control Act in appropriate circumstances.

Item [4] of the bill contains proposed section 6 which creates a stand-alone offence of posting bills. It stipulates that a person must not intentionally affix a placard or paper on any premises in public view unless the person has the consent of the owner or occupier. The maximum penalty for this offence will be four penalty units. This offence is presently contained in section 6 of the Act, which also includes the simple offence of marking premises. However, as the marking offence is being moved to section 4, section 6 is being redrafted as a stand-alone provision. This amendment will also reflect the different conduct involved in the respective offending behaviour. Schedule 2 to the bill makes a consequential amendment to clause 61 of the Passenger Transport Regulation 2007, which contains an offence related to billposting and other offending conduct on railway premises and property. The bill will remove the billposting elements of the offence in the Passenger Transport Regulation as that is now covered by the billposting offence in proposed section 6.

Items [2], [3], [5], [6], [11] and [12] of the bill make consequential amendments to sections 5, 8B and 13B of the Act to reflect the reformed offence provision. Items [7] and [8] of the bill make amendments to section 9B to clarify matters relating to the imposition of community clean-up work. Proposed subsection 9B (1A) clarifies that a court may make a community clean-up order on the application of the prosecutor, offender or on its own motion. Proposed subsection 9B (5) clarifies that such an order may be made before or at the time the fine is imposed for the graffiti offence or at any time after the fine has been imposed but before the fine has been fully paid. These amendments will encourage courts to turn their mind to the community clean-up order provisions when dealing with graffiti offenders without limiting the discretion of the court to make an order or not. Item [9] contains proposed subsections 9G (3) and (4) which impose a limit on the number hours of community clean-up work that can be imposed by community clean-up orders. For adult offenders the maximum number of hours is 300 hours in any one community clean-up order and for child offenders the maximum number of hours is 100. Child offenders are able to complete their community clean-up orders concurrently with other clean-up orders.

The amendments to section 9G are being made to bring the provisions into line with limitations on community clean-up orders in the Fines Act 1996. The statutory review found that without those limitations the Graffiti Control Act currently applies more harshly to those who have not defaulted on fines or who seek to engage early in community clean-up than the Fines Act 1996 does to fine defaulters. The amendments ensure that those who pay their fines or engage early in community clean-up are not treated to potentially more onerous outcomes than fine defaulters. Item [10] amends the Act to allow the regulations to provide for procedural matters relating to applications for community clean-up orders. These amendments, combined with the restructure of the offence provisions, are designed to increase the number of community clean-up orders imposed under the Act. They confirm a strong commitment by this Government to address graffiti and make sure young offenders understand that there are consequences to their actions.

Item [13] amends section 23 to provide that a further review of the Act is to be undertaken as soon as possible after 10 December 2015. This is three years after the commencement date of the 2012 reforms passed by the Government and will ensure that the impact of those reforms

as well as the others contained in this bill can be assessed by the review. A statutory review in three years will examine whether the policy objectives of the Act remain valid and that the provisions are effective in tackling graffiti in the community. The amendments in this bill amend the graffiti offences in the Graffiti Control Act to ensure they are flexible and responsive to all forms of graffiti in our community. They should encourage prosecuting authorities to use these provisions to charge graffiti offences and further strengthen the ability of a court to make community clean-up orders. Further, the amendments will improve the collection of accurate statistics on the incidence of graffiti in our community and the penalties imposed on graffiti offenders. The bill demonstrates the Government's commitment to effectively combating graffiti in our local communities. I commend the bill to the House.

Debate adjourned on motion by Mr Ryan Park and set down as an order of the day for a future day.