



New South Wales

Graffiti Control Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Graffiti Control Act 2008* (the *Principal Act*) to implement certain recommendations arising from the statutory review of that Act. In particular, the Bill:

- (a) replaces certain graffiti offences with a new two-tiered graffiti offence, and
- (b) clarifies how community clean up orders may be made, and
- (c) sets a maximum number of hours of community clean up work that may be specified in any one community clean up order, and
- (d) makes other amendments of a machinery, savings or transitional nature.

The Bill also makes a consequential amendment to the *Passenger Transport Regulation 2007*.

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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Graffiti Control Act 2008 No 100

Schedule 1 [1] substitutes section 4 of the Principal Act (Damaging or defacing property by means of graffiti implement). The substituted section (Marking premises or property) creates a two-tiered offence, one being a basic offence in proposed section 4 (1) and the other being an offence committed in circumstances of aggravation in proposed section 4 (2).

The basic offence prohibits a person, without reasonable excuse (proof of which lies on the person), from intentionally marking any premises or other property, unless the person has first obtained the consent of:

- (a) if the premises are occupied—the occupier or person in charge of the premises, or
- (b) if the premises are unoccupied or in relation to other property—the owner or person in charge of the premises or property.

This basic offence carries a maximum penalty of 4 penalty units (currently \$440).

Proposed section 4 (2) and (3) provide that a person is guilty of a separate offence if the person commits the basic offence in circumstances of aggravation, being circumstances where the person has intentionally marked the premises or other property:

- (a) by means of any graffiti implement, or
- (b) in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.

This aggravated offence carries a maximum penalty of 20 penalty units (currently \$2,200) or imprisonment for 12 months.

Schedule 1 [2], [3], [5], [6], [11] and [12] make consequential amendments.

Schedule 1 [4] substitutes section 6 of the Principal Act as a consequential amendment. The proposed section 6 no longer deals with marking premises as this is dealt with in proposed section 4.

Schedule 1 [7] makes it clear that a community clean up order may be made:

- (a) on the application of the prosecutor or the offender, or
- (b) on the court's own motion.

Schedule 1 [8] makes it clear that an application for a community clean up order may be made:

- (a) before or at the time the court concerned imposes a fine for the graffiti offence, or
- (b) at any other time after the fine has been imposed but before the fine has been fully paid or referred to the State Debt Recovery Office for the making of a court fine enforcement order under the *Fines Act 1996*.

Schedule 1 [9] makes provision regarding the maximum number of hours of community clean up work that is to be carried out under a community clean up order. Specifically, the number of hours specified in any one community clean up order must not exceed 300 hours (in the case of an adult offender) or 100 hours (in the case of a child offender).

Schedule 1 [10] makes it clear that regulations under the Principal Act may deal with applications for community clean up orders.

Schedule 1 [13] provides that a further review of the Principal Act is to be undertaken as soon as possible after 10 December 2015 (being 3 years after the date of commencement of the *Graffiti Legislation Amendment Act 2012*).

Schedule 1 [14] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Passenger Transport Regulation 2007

Schedule 2 makes a consequential amendment to the *Passenger Transport Regulation 2007*.