



# Legislative Council

## Local Government Amendment (Graffiti) Bill Hansard - Extract

04/06/2002

### Second Reading

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [2.52 p.m.]: 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.

The bill is an extension of the existing graffiti provisions in the Local Government Act 1993, which facilitate agreements between councils and owners or occupiers of private land for the timely removal of graffiti. This legislation will enable councils to remove graffiti on property without the agreement of the owner or occupier if the graffiti is visible and accessible from a public place.

The Government is committed to addressing community concerns about the financial and social cost of illegal graffiti. To this end a number of initiatives have been taken through the "NSW Graffiti Solutions program" and work by agencies including the Attorney General's Department and the Department of Local Government.

Among these initiatives is the Local Government Amendment (Graffiti Removal) Act 2001, which commenced on 1 July 2001. It provides a mechanism for the timely and effective removal of graffiti from private property through (voluntary) formal agreements between councils and owners or occupiers. One of the most effective strategies in reducing graffiti is to remove it as quickly as possible (within 48-72 hours) and to persist in removing it.

The legislation has been received favourably by local government and the community.

However, some councils have occasionally found it difficult to obtain agreements in some instances with private property owners, particularly of commercial blocks.

In some cases this is due to the fact that a number of different entities may be partly responsible for the maintenance of building walls and other surfaces. Therefore, it can be difficult and time consuming to obtain consent from all responsible parties.

Consequently the proposed additional powers will allow the removal of graffiti, without having to first obtain the agreement of an owner or occupier. I should stress this is only in cases where the graffiti is visible from a public place and it can be removed from a public place. In these situations the community will benefit from the speedy removal of illegal graffiti which otherwise detracts physically from the area and affects property values, community well being and civic pride.

Under these provisions, council will be able to remove graffiti from property which is particularly susceptible to illegal graffiti and highly visible from public places such as roads, bridges, wharfs, and parks in a timely and efficient manner. This, in conjunction with community support, and other strategies already in place will go further in providing an effective deterrent to graffiti. Moreover it will encourage councils to take an active and participatory role in graffiti prevention. Particularly as local communities often look to councils to assist with their concerns about graffiti.

Following graffiti removal council will be required to notify affected owners or occupiers of its action. This will inform owners or occupiers of the work that has been undertaken to their property and provide an opportunity for them to raise any concerns about damage if applicable.

As council will not need to notify or obtain the owner's or occupier's prior consent, particular care will be required to ensure that the means used to remove the graffiti does not cause damage to the surface bearing the graffiti. While the council should endeavour to leave the affected surface in a similar condition to what it was in prior to the graffiti it will not always be possible. For instance, painted surfaces may prove difficult to restore, as it will not be possible to always match the colour of the surface. In these situations the owner or occupier may wish to repaint the surface once council has removed the graffiti.

This is considered to be reasonable given that the costs associated with removal of the graffiti will be borne by council. Furthermore, council will be liable for any damage caused as a result of activities to remove graffiti, such as damage to the property that is the subject of the removal activity, and any other property. This is to provide some protection for owners and occupiers given that their consent prior to removal may not have been given.

Where a dispute arises concerning damage caused by the graffiti removal work, the parties may agree to refer the matter to arbitration for resolution. If agreement cannot be reached the parties can refer the matter to the Land and Environment Court for determination.

There is a need to ensure accountability where council is carrying out work on property and is using public funds. Presently council must keep a publicly available register containing details of graffiti removal work it has undertaken under agreements with property owners or occupiers. This requirement will be extended to graffiti removal work performed under the current proposal.

Consequently, there will be available as a matter of public record under section 12 of the Act, itemised expenditure identifying the owner or occupier of the premises where the work was carried out, the nature of the work, and the cost of carrying out the work. Such a register will enable property owners, occupiers and interested members of the public to access information about council activities pertaining to graffiti removal.

Section 67 of the Act imposes conditions on councils for performance of work on private land. As with graffiti removal carried out in accordance with an agreement between council and an owner or occupier, this section will not apply to removal of graffiti under the current proposal. Council will therefore not be required to fix a cost for graffiti removal.

Section 356 of the Act places obligations on councils when providing financial assistance for the purposes of exercising its functions. Under this bill, when council removes graffiti from private property it will pay the costs and therefore the owner or occupier will benefit. Allowing councils to fund the removal of graffiti that is highly visible from public places is also of benefit to the community.

Council will need to have passed a resolution for a program to fund the removal of graffiti under section 356(1) of the Act. Once this has been done, and removal of graffiti is consistent with the program, then the public notice requirement in section 356 will not apply.

In conclusion, graffiti affects people's perceptions of an area, property values, community wellbeing and civic pride. This is particularly so where the graffiti is on property that is highly visible from public places such as roads, wharfs, bridges and parks. Evidence indicates that timely and persistent removal of graffiti is an effective deterrent. The current proposal adds to the strategies adopted by the Government to deal with illegal graffiti and will assist councils in this challenge. In turn communities will benefit.

I am sure the Opposition will endeavour to criticise this bill by raising the question of unfunded mandate.

It should be remembered that these provisions confer an ability on councils to remove graffiti—not an obligation.

The provisions of this bill are therefore consistent with the principle that councils are autonomous organisations that have the ability and capacity to spend their resources in the most appropriate way in which they see fit for their communities.

Because we elect 1,700 councillors in NSW every four years at a cost of \$15 million, it is clearly appropriate that councils determine their priorities, otherwise why elect them at all?

This bill simply gives councils a greater power than ever before to remove graffiti should they themselves deem it a priority.

It brings NSW councils into line with municipalities in cities like Los Angeles and Chicago.

The NSW Government is committed to giving every stakeholder in the fight against graffiti the very best weapons to win the war.

This is the next part of that process.

I commend the bill to the House.