

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Children (Community Service Orders) Act 1987* and the *Crimes (Sentencing Procedure) Act 1999* to require a court making a community service order under those Acts in relation to persons guilty of offences under the *Graffiti Control Act 2008* to impose a condition requiring the persons to remove or obliterate graffiti and restore the appearance of buildings, vehicles, vessels or places consequent on the removal or obliteration of graffiti (unless it is not reasonably practicable for such work to be performed by the persons),
- (b) to amend the *Graffiti Control Act 2008* to enable a court to make certain orders with respect to the driver licence of a person who has committed an offence under section 4 (Damaging or defacing property by means of graffiti implement) or 5 (Possession of graffiti implement) of that Act instead of or in addition to imposing a fine, sentence of imprisonment or community service order on the offender,
- (c) to amend the *Young Offenders Act 1997* to remove the power for investigating officials and specialist youth officers to deal with young offenders who have committed graffiti offences by way of caution, warning or youth justice conference instead of court proceedings,
- (d) to make various other consequential amendments.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Acts and Regulation

Amendments to Children (Community Service Orders) Act 1987

The *Children (Community Service Orders) Act 1987* (the **1987 Act**) applies to a person who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence by, a court and who was a child when the offence was committed and was under the age of 21 years when charged with the offence. Section 5 of the 1987 Act enables a court to make a community service order requiring such a person to perform community service work instead of imposing a sentence of imprisonment on, or making an order under the *Children (Criminal Proceedings) Act 1987* in respect of, the person. Section 11 of the 1987 Act provides that the court may impose conditions on any community service order made by it. **Schedule 1.1 [4]** amends section 11 to require a court that makes such a community service order in respect of a person who has committed an offence under the *Graffiti Control Act 2008* to impose a condition that the work to be performed by the person include the removal of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them unless it is not reasonably practicable for such work to be performed by the person. **Schedule 1.1 [1]–[3]** contain consequential provisions.

Schedule 1.1 [5] and [6] enable the making of savings and transitional regulations and contain a savings provision.

Amendments to Crimes (Sentencing Procedure) Act 1999

Section 8 of the *Crimes (Sentencing Procedure) Act 1999* enables a court to make a community service order directing an offender other than one to whom the *Children (Community Service Orders) Act 1987* applies to perform community service work instead of imposing a sentence of imprisonment on the offender. Section 90 of the *Crimes (Sentencing Procedure) Act 1999* provides that a court may impose such conditions on any order made by it as it considers appropriate. **Schedule 1.2 [2]** amends section 90 to require a court that makes such a community service order in respect of a person who has committed an offence under the *Graffiti Control Act 2008* to impose a condition that the work to be performed by the offender include the

removal or obliteration of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them unless it is not reasonably practicable for such work to be performed by the offender. **Schedule 1.2 [1] and [3]–[5]** contain consequential, savings and transitional provisions.

Amendments to Fines Act 1996

Schedule 1.3 amends the *Fines Act 1996* as a consequence of the amendments to the *Children (Community Service Orders) Act 1987* described above (section 11 of that Act extends to certain community service orders made under the *Fines Act 1996*).

Amendments to Graffiti Control Act 2008

Section 4 of the *Graffiti Control Act 2008* makes it an offence to intentionally damage or deface any premises or other property by means of a graffiti implement (that is, spray paint, a marker pen or any implement designed or modified to produce a mark that is not readily removable by wiping or by use of water or detergent).

Section 5 of that Act makes it an offence to possess a graffiti implement with the intention that it be used to damage or deface premises or other property. Section 15 of that Act provides that a court may, instead of imposing a fine or sentencing a person to imprisonment for such an offence, impose a community service order recommending that the work to be performed by the offender include the removal or obliteration of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them. **Schedule 1.4 [2]** omits section 15 from the *Graffiti Control Act 2008*, and **Schedule 1.4 [1]** inserts Part 4A into that Act to provide the court with an additional power to make an order extending the period of the offender's learner or provisional licence for a period of 6 months (or a lesser period specified in the order), suspending the offender's driver licence for a period of 6 months (or a lesser period specified in the order) or, as an alternative to suspension of an unrestricted licence, requiring the driver not to equal or exceed a specified threshold number of demerit points for an equivalent period (a **driver licence order**). **Schedule 1.4 [3] and [4]** enable the making of savings and transitional regulations and contain savings provisions.

Amendments to Road Transport (Driver Licensing) Act 1998

Schedule 1.5 [1] inserts section 16AB into the Act. The proposed section provides for the suspension of the unrestricted licence of a person who is subject to a driver licence order made under proposed section 13C (1) (c) of the *Graffiti Control Act 2008* if the person equals or exceeds a specified threshold number of demerit points during the period the order has effect. **Schedule 1.5 [2]** amends section 20 of the *Road Transport (Driver Licensing) Act 1998* to enable the making of regulations with respect to driver licences the subject of the proposed driver licence orders.

Amendment to Road Transport (Driver Licensing) Regulation 2008

Schedule 1.6 amends clause 31C (7) of the Regulation to make it clear that the subclause does not apply to extensions of provisional licence periods by a driver licence order.

Amendments to Young Offenders Act 1997

The *Young Offenders Act 1997* provides an alternative process to court proceedings for children alleged to have committed offences through the use of formal cautions, warnings and youth justice conferences. **Schedule 1.7 [2], [3] and [5]** amend sections 13, 18 and 31, respectively, of that Act so that formal cautions (other than cautions by courts) and warnings cannot be used in relation to offences against the *Graffiti Control Act 2008*. **Schedule 1.7 [4] and [6]** make consequential amendments. **Schedule 1.7 [7]** amends section 37 to ensure that a child who is alleged to have committed a graffiti offence has no entitlement to be dealt with by conference before criminal proceedings are commenced. **Schedule 1.7 [8]–[10]** amend section 38 to make it clear that a specialist youth officer cannot refer a child

who is alleged to have committed a graffiti offence to a conference or for caution. **Schedule 1.7 [11]** amends section 40 of that Act so that a court will continue to be able to refer a matter involving a child who is alleged to have committed such an offence to a conference administrator for a youth justice conference. **Schedule 1.7 [1]** is a consequential provision that inserts a definition of **graffiti offence**. **Schedule 1.7 [12] and [13]** enable the making of savings and transitional regulations and contain savings provisions.