

**Bill introduced on motion by Mr Greg Smith.**

**Agreement in Principle**

**Mr GREG SMITH** (Epping—Attorney General, and Minister for Justice) [4.35 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Graffiti Legislation Amendment Bill 2011. The bill gives effect to commitments that the Government made during the election campaign to target graffiti vandals. The bill strengthens the penalties available for courts when sentencing graffiti offenders, provides courts with an increased range of sentencing options for graffiti offenders, and ensures that young offenders have to appear before a court when charged with graffiti offences. Graffiti is a significant and costly problem. In 2010 the Standing Committee on Public Works tabled its report entitled "Graffiti and Public Infrastructure". The committee reported that 11,691 graffiti incidents were reported to police in New South Wales in 2009. The report also estimated that the overall cost of graffiti to New South Wales is in the hundreds of millions of dollars. The committee also heard evidence from RailCorp estimating that graffiti was costing the authority \$55 million a year.

The Government is determined to tackle this unsightly and costly problem through the initiatives it is introducing in this bill. The Government is committed to ensuring that when a graffiti offender is sentenced they can be required to undertake graffiti clean-up work. Currently section 91 of the Crimes (Sentencing Procedure) Act 1999 allows for a recommendation that an offender perform graffiti removal work as a condition of a community service order. This bill strengthens the provisions relating to community service orders in schedule 1.2 by ensuring that where an offender has been found guilty of an offence under the Graffiti Control Act 2008 and has been sentenced to a community service order, the court must impose a condition requiring graffiti clean-up work to be performed. The bill provides that a court will not be required to impose the condition if the court considers in the circumstances of the case that it is not reasonably practicable for graffiti clean-up work to be performed. Where the court does not impose such a condition, it must make a record of its reasons for not doing so. There will be occasions where it will not be reasonably practicable for a court to impose a condition of graffiti clean-up work. When that is the case, requiring the court to provide reasons for not imposing such a condition will allow action to be taken in the future to identify any obstacles to imposing such conditions. These provisions build upon existing graffiti clean-up orders that can be imposed for Graffiti Control Act 2008 offences in order to satisfy a fine.

The bill strengthens not only the existing provisions in relation to adult community service orders but also community service orders imposed on young offenders. Schedule 1.1 inserts a similar provision into the Children (Community Service Orders) Act 1987. This will ensure consistent application of the proposal so that when a community service order is imposed for

a Graffiti Control Act 2008 offence, regardless of whether you are a young offender or an adult, graffiti clean-up work must be a condition of that community service order where reasonably practicable. The Government is committed to providing courts dealing with graffiti offenders with an increased range of sentencing options that can act as real deterrents. To achieve this objective the bill creates a new penalty option in the form of driver licence orders specifically for offences of damaging or defacing property by means of a graffiti implement under section 4 and possession of a graffiti implement under section 5 of the Graffiti Control Act 2008. These new penalty options implement an election commitment that graffiti offenders should have action taken against them in respect of their driver's licence for graffiti offences. Schedule 1.4 to the bill creates the new penalty of driver licence orders.

Where an offender is convicted of an offence under sections 4 or 5 of the Graffiti Control Act, the court will now be able to sentence the offender in the following ways. Where an offender is the holder of a learner or a provisional licence, the order will extend the minimum period that that person must hold a learner or a provisional licence before progressing to another licence for a period of up to six months. The power to impose licence conditions is similar to that available under the Road Transport Driver Licensing Regulation 2008 that allows for a provisional licence period to be extended for an offence of a minor using false identification to obtain entry into licensed premises. A court will also be able to suspend a person's driver licence of any class for a period of up to six months on and from the day on which the order is made.

The court will have an alternative to suspending an unrestricted licence holder for a specified period up to six months by imposing a graffiti licence order. The graffiti licence order will limit at four the number of demerit points that a person subject to the order can accrue for the specified period of the order. If a person subject to a graffiti licence order incurs four or more demerit points during the period specified in the order, the Roads and Traffic Authority must give the person a notice suspending all driver licences held by the person for an equivalent period of suspension that would have applied had the person been suspended when this penalty was originally imposed. There will be no capacity to appeal the decision of the Roads and Traffic Authority to suspend a licence pursuant to these provisions. These provisions allow a court to give an offender a warning and therefore a serious deterrent, without automatically suspending the offender's licence and potentially affecting the person's capacity to earn a livelihood. These provisions will not be available where an offender has three points or less remaining on their licence.

During the election campaign the Government made a clear commitment that young offenders charged with graffiti offences should appear before a court. The Government wants young offenders charged with graffiti offences to realise that what may seem a trivial matter to them, is a serious and costly offence. To that end, this bill will ensure that a young offender charged with a graffiti offence will not be diverted from the courts by the operation of the Young Offenders Act 1987. The amendments to the Young Offenders Act 1987 at schedule 1.7 to the bill achieve the Government's objective by no longer allowing an offence

under the Graffiti Control Act to be the subject of a warning or caution. In addition to these amendments the bill also prevents the Director of Public Prosecutions and police from being able to refer a young offender to a youth justice conference for a Graffiti Control Act offence.

The effect of these amendments will be that pre-court diversion for a graffiti offender will no longer be an option. The bill will still allow a court to refer a young offender to a youth justice conference but that is only after they have appeared in court and where the child admits the offence and the court is of the opinion that a conference should be held. By retaining the power to refer a child to a youth justice conference the court also retains the ability under the Young Offenders Regulation 2010 to require a graffiti offender under a conference outcome plan to undertake graffiti removal work, other community service work or participate in personal development programs. These particular amendments achieve the Government's objective of making young offenders realise the seriousness of their offences whilst continuing to give the court discretion to deal with the offender as appropriate.

This bill delivers on the Government's election commitment to tackle graffiti in local communities. The bill will strengthen the capacity of the courts to sentence graffiti offenders to do graffiti clean-up work. The bill expands the penalties available to a court for graffiti by providing for driving licence sanctions. The bill will ensure that young offenders realise the seriousness of graffiti offences by requiring them to appear before a court. I commend the bill to the House.