

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [4.15 p.m.]: I move:

That this bill be now read a second time.

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 in 2009 that 11,691 graffiti incidents were reported to police in New South Wales. The report also estimated that the overall cost of graffiti to New South Wales is in the hundreds of millions of dollars. The committee 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 he or she can be required to undertake graffiti cleanup 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 of item 1.2 of schedule 1 relating to community service orders by ensuring that when 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 cleanup 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 cleanup 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 when it will not be reasonably practicable for a court to impose a condition of graffiti cleanup 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 cleanup orders that can be imposed for Graffiti Control Act 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. Item 1.1 of schedule 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 offence, regardless of whether a person is a young offender or an adult, graffiti cleanup 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 drivers licence orders. These orders are 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. These new penalty options implement an election commitment that graffiti offenders

should have action taken against them in respect of their drivers licence for graffiti offences. Item 1.4 of schedule 1 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 provisional licence, the order will extend the minimum period that person must hold a learner or provisional licence before progressing to another licence for a period of up to six months.

The power to impose licence extensions 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 also will 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 of 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 the 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. Therefore, it is a serious deterrent without automatically suspending the offender's driver 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 his or her 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 of 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. In addition to this amendment, the bill prevents the Director of Public Prosecutions and police from being able to issue a caution or 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 issue a caution or refer a young offender to a youth justice conference, but that is only after the child has 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 or other community service work or participate in personal development programs. These 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 and expand the penalties available to a court for graffiti by providing for driver licence sanctions. The bill will ensure that young offenders realise the seriousness of graffiti offences by requiring them to appear before a court.

Graffiti adds significantly to the lack of confidence that many people feel that they are safe from crime in their communities. Graffiti crime can operate as a gateway to the commission of more serious crimes. This bill empowers the court system to send a clear message to graffiti offenders that we want to stop them from taking the pathway to more serious crime. I have said publicly that today's graffiti is tomorrow's malicious damage, next week's stealing and next month's break and enters. We want to deter young offenders from taking that incremental pathway. The Government is committed to breaking that cycle for young offenders. The current system does not draw lines in the sand; we have etched the lines in concrete. Young offenders will understand that graffiti is an offence that tears at the heart of a community and engenders a lack of confidence amongst its members. Areas that are bombarded with graffiti are left with a sense of lawlessness. This legislation works in two ways. It says to the community that we are serious about addressing this problem and we are taking a serious approach to it. It also says to young offenders that the current system has failed to address this issue effectively.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! Government members will listen to the Leader of the Government respectfully.

The Hon. MICHAEL GALLACHER: Government members are excited about this legislation. I thank them for their support for this important piece of legislation. It sends a message to young offenders that we are serious about assisting them in breaking the cycle of offending. For many young people, graffiti vandalism is the starting point of offending. The approach taken by the previous Government led to many young offenders being in a never-ending cycle of cautions and warnings and incrementally working their way through to committing more serious crimes. Under this legislation they will be appear before a court so that they understand that the community and the Parliament view graffiti vandalism as a serious crime. We also have ensured follow-up measures. As young offenders clean up their own mess or the mess of others they will get a clear signal that the community will not tolerate this crime any further. The community has had enough.

Tough measures must be taken on graffiti crime. I suspect some will criticise the removal of driver licences. The previous Government took similar steps in relation to alcohol-related offences for young people. That is an example of how legislation can be used in myriad ways to get the message across to young people. We are saying to young people that we value a graffiti-free community. Mainstream communities in New South Wales and Australia want a graffiti-free society. Young people value their independence and their ability to obtain a driver licence. They recognise that obtaining a driver licence is a rite of passage to adulthood. We say to them that it is not a God-given right. If they are not mature enough to conduct themselves properly in the community and they participate in antisocial behaviour, they are not mature enough to get behind the wheel of a motor vehicle and be responsible for their own safety and the safety of their friends and others. With this bill we are saying to them that they must act maturely and that this type of wanton vandalism of public and private property will not be tolerated.