

**SUMMARY OFFENCES AND OTHER LEGISLATION
(GRAFFITI) AMENDMENT ACT 1994 No. 90**

NEW SOUTH WALES



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**SUMMARY OFFENCES AND OTHER LEGISLATION
(GRAFFITI) AMENDMENT ACT 1994 No. 90**

NEW SOUTH WALES



Act No. 90, 1994

An Act to amend the Summary Offences Act 1988 with respect to the possession and use of spray cans, and the Community Service Orders Act 1979 and the Children (Community Service Orders) Act 1987 so as to encourage the removal of graffiti as a preferred form of community service work; and for other purposes. [Assented to 12 December 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Summary Offences and Other Legislation (Graffiti) Amendment Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Summary Offences Act 1988 No. 25

3. The Summary Offences Act 1988 is amended as set out in Schedule 1.

Amendment of Community Service Orders Act 1979 No. 192

4. The Community Service Orders Act 1979 is amended as set out in Schedule 2.

Amendment of Children (Community Service Orders) Act 1987 No. 56

5. The Children (Community Service Orders) Act 1987 is amended as set out in Schedule 3.

**SCHEDULE 1—AMENDMENT OF SUMMARY OFFENCES
ACT 1988**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert, in alphabetical order:

“**spray can**” includes anything that is made or adapted for use for emitting a liquid or substance and that operates by means of air, gas or vapour pressure;

“**spray paint**” includes any liquid or other substance that is designed to stain, mark or corrode and to be applied from a spray can, and includes the spray can;

(2) Part 2, heading:

After “PUBLIC”, insert “AND OTHER”.

SCHEDULE 1—AMENDMENT OF SUMMARY OFFENCES ACT
1988—*continued*

(3) Sections 10A, 10B:

After section 10, insert:

Damaging and defacing property by means of spray paint

10A. (1) A person must not, without reasonable excuse (proof of which lies on the person), wilfully damage or deface any premises or other property by means of spray paint.

Maximum penalty: 20 penalty units or imprisonment for 6 months.

(2) Instead of imposing a fine on the person or sentencing the person to imprisonment, the court:

(a) may make an order under section 4 of the Community Service Orders Act 1979 requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 4 (1A) of that Act; or

(b) may make an order under section 5 of the Children (Community Service Orders) Act 1987 requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 5 (1A) of that Act,

as the case requires.

(3) A court that convicts a person of an offence under this section must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 10B on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

Possession of spray paint

10B. (1) A person must not have spray paint in the person's possession with the intention that it should be used to damage or deface premises or other property.

Maximum penalty: 10 penalty units or imprisonment for 3 months.

**SCHEDULE 1—AMENDMENT OF SUMMARY OFFENCES ACT
1988—*continued***

(2) Instead of imposing a fine on the person or sentencing the person to imprisonment, the court:

(a) may make an order under section 4 of the Community Service Orders Act 1979 requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 4 (1A) of that Act; or

(b) may make an order under section 5 of the Children (Community Service Orders) Act 1987 requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 5 (1A) of that Act,

as the case requires.

(3) A court that convicts a person of an offence under this section must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 10A on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

(4) If a person is convicted of an offence under this section, the court may, in addition to any other penalty it may impose, make an order that the spray paint be forfeited to the Crown, and the spray paint is forfeited accordingly.

**SCHEDULE 2—AMENDMENT OF COMMUNITY SERVICE
ORDERS ACT 1979**

(Sec. 4)

(1) Section 4 (**Community service orders in respect of convicted persons**):

After section 4 (1), insert:

(1A) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include:

(a) the removal of graffiti from buildings, vehicles, vessels and places; and

**SCHEDULE 2—AMENDMENT OF COMMUNITY SERVICE
ORDERS ACT 1979—continued**

(b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

(2) Section 14 (Obligations of persons in respect of whom orders are in force):

At the end of the section, insert:

(2) The work to be performed by a person in respect of whom a community service order is in force (being an order containing a recommendation referred to in section 4 (1A) or 26A (1AA)) must, if practicable, include:

- (a) the removal of graffiti from buildings, vehicles, vessels and places; and
- (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

(3) Section 26A (Community service work in default of payment of fine):

After section 26A (1), insert:

(1AA) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include:

- (a) the removal of graffiti from buildings, vehicles, vessels and places; and
- (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

**SCHEDULE 3—AMENDMENT OF CHILDREN (COMMUNITY
SERVICE ORDERS) ACT 1987**

(Sec. 5)

(1) Section 5 (Making of children's community service orders):

After section 5 (1), insert:

(1A) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include:

- (a) the removal of graffiti from buildings, vehicles, vessels and places; and

SCHEDULE 3—AMENDMENT OF CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987—*continued*

(b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

(2) Section 5A (**Community service work in default of payment of fine**):

After section 5A (1), insert:

(1AA) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include:

- (a) the removal of graffiti from buildings, vehicles, vessels and places; and
- (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

(3) Section 17 (**Obligations of persons subject to children's community service orders**):

At the end of the section, insert:

(2) The work to be performed by a person in respect of whom a children's community service order is in force (being an order containing a recommendation referred to in section 5 (1A) or 5A (AA)) must, if practicable, include:

- (a) the removal of graffiti from buildings, vehicles, vessels and places; and
- (b) the restoration of the appearance of buildings, vehicles, 'vessels and places consequent on the removal of graffiti from them.