



New South Wales

Summary Offences Amendment (Spray Paint Cans) Act 2007 No 53

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Summary Offences Amendment (Spray Paint Cans) Act 2007 No 53

Act No 53, 2007

An Act to amend the *Summary Offences Act 1988* and the *Summary Offences Regulation 2005* to provide for the confiscation of spray paint cans from minors in public places. [Assented to 15 November 2007]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Summary Offences Amendment (Spray Paint Cans) Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Summary Offences Act 1988 No 25

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

4 Amendment of Summary Offences Regulation 2005

The *Summary Offences Regulation 2005* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Summary Offences Act 1988

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

spray paint can means a spray can that contains spray paint.

[2] Section 10C Sale of spray paint cans to persons under 18

Omit section 10C (7).

[3] Section 10D Unsecured display by retailers of spray paint cans

Omit the definition of *spray paint can* from section 10D (5).

[4] Section 10E

Insert after section 10D:

10E Confiscation of spray paint cans from minors

- (1) A police officer may seize a spray paint can in the possession of a person in a public place if the officer suspects on reasonable grounds that the person is under the age of 18 years, unless the person satisfies the officer that the person has the spray paint can in his or her possession for a purpose that is not unlawful.
- (2) A spray paint can may be seized from a person under this section whether or not the person has been or is to be charged with any offence in connection with the person's possession of the spray paint can.
- (3) A spray paint can seized under this section is forfeited to the Crown.
- (4) The regulations may make provision for or with respect to:
 - (a) the procedure to be followed as regards the seizure of spray paint cans under this section and the procedure to be followed after their seizure, and
 - (b) without limiting paragraph (a), prescribing the circumstances in which and the procedure by which spray paint cans seized under this section are to be returned and providing for the jurisdiction of a court to order their return.

Schedule 2 Amendment of Summary Offences Regulation 2005

(Section 4)

Part 2A

Insert after Part 2:

Part 2A Seized spray paint cans

10A Reasons for seizure

- (1) When seizing a spray paint can under section 10E of the Act (referred to in this Part as a *seized spray paint can*), a police officer must give reasons for the seizure.
- (2) For that purpose, the police officer must tell the person from whom the spray paint can is seized that the police officer:
 - (a) suspects that the person is under the age of 18 years, and
 - (b) is not satisfied that the person has the spray paint can in his or her possession for a purpose that is not unlawful.

10B Disposal of seized spray paint cans

A seized spray paint can may be disposed of immediately if:

- (a) part of the contents of the can have been used, or
- (b) it is otherwise of negligible value.

10C Information as to custody of seized spray paint can

- (1) If a seized spray paint can is not to be disposed of immediately, the police officer concerned must inform the person from whom the spray paint can is seized:
 - (a) that the spray paint can will be taken to a specified police station and kept there for at least 7 days, and
 - (b) that a claim for return of the spray paint can may be made at that police station.
- (2) A receipt specifying details of the seized spray paint can must be issued to that person:
 - (a) at the time of seizure, by the police officer concerned, or

- (b) at the time the spray paint can is taken to a police station, by any police officer there.

10D Seized spray paint can to be kept at police station

- (1) A seized spray paint can that is not disposed of immediately must be taken to the appropriate police station and kept there for at least 7 days.
- (2) The appropriate police station is the one to which the person from whom the spray paint can was seized was informed it would be taken.
- (3) A seized spray paint can kept at a police station may be disposed of if a claim for its return under clause 10E is not made within 7 days after the spray paint can was seized.

10E Claim for seized spray paint can

- (1) A seized spray paint can kept at a police station may be claimed by, and if claimed must be returned to, the person from whom it was seized if:
 - (a) the person establishes that the person was at least 18 years of age at the time of the seizure, or
 - (b) the person establishes that the person had the spray paint can in his or her possession for a purpose that is not unlawful (being a purpose of which the police officer who seized the spray paint can was informed at the time of its seizure).
- (2) If a claim for a seized spray paint can is rejected, the spray paint can must be kept for at least another 7 days (to allow for an application to be made to a court under clause 10F) and may be disposed of if an application under that clause is not made within 7 days after the claim is rejected.
- (3) If an application under clause 10F is made before the seized spray paint can is disposed of, the spray paint can must be kept until the application is determined.

10F Application to court for return of seized spray paint can

A court may, on application by a person from whom a seized spray paint can was seized, make an order that the seized spray paint can be returned to the person if the court is satisfied that the person had the seized spray paint can in his or her possession at the time of its seizure for a purpose that was not unlawful (being a purpose of which the police officer who seized the spray paint can was informed at the time of its seizure).

[Agreement in principle speech made in Legislative Assembly on 17 October 2007
Second reading speech made in Legislative Council on 6 November 2007]

BY AUTHORITY