



New South Wales

Graffiti Control Regulation 2021

under the

Graffiti Control Act 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Graffiti Control Act 2008*.

MARK SPEAKMAN, MP

Attorney General, and Minister for Prevention of Domestic and Sexual Violence

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the *Graffiti Control Regulation 2014*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

The objects of this Regulation are as follows—

- (a) to set out the procedure to be followed for the seizure of spray paint cans,
- (b) to make provision for the secured display by retailers of spray paint cans,
- (c) to prescribe the amount payable when certain offences under the Act are dealt with by way of penalty notices and additional persons who may issue penalty notices.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely, matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Graffiti Control Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation repeals and replaces the *Graffiti Control Regulation 2014*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definition

In this Regulation—

the Act means the *Graffiti Control Act 2008*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 Seized spray paint cans—the Act, s 9

4 Reasons for seizure

- (1) When seizing a spray paint can from a person under the Act, section 9 (referred to in this Part as a *seized spray paint can*), a police officer must give reasons to the person for the seizure.
- (2) When giving reasons, the police officer must tell the person that the police officer—
 - (a) suspects the person is less than 18 years of age, and
 - (b) is satisfied the person has the spray paint can in his or her possession for an unlawful purpose.

5 Disposal of seized spray paint cans

A seized spray paint can may be disposed of immediately by a police officer if—

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

6 Information as to custody of seized spray paint can

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

7 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 specified police station and kept there for at least 7 days.
- (2) A seized spray paint can kept at a police station may be disposed of if a claim for its return under section 8 is not made within 7 days after the spray paint can was seized.

8 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 the person establishes the person—
 - (a) was at least 18 years of age at the time of the seizure, or
 - (b) had the spray paint can in the person's 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—
 - (a) must be kept for at least another 7 days to allow for an application to be made to a court under section 9, and
 - (b) may be disposed of if an application under section 9 is not made within 7 days after the claim is rejected.

- (3) If an application under section 9 is made before the seized spray paint can is disposed of, the spray paint can must be kept until the application is determined.

9 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 the person had the seized spray paint can in the person's 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.

Part 3 Miscellaneous

10 Display by retailers of spray paint cans

- (1) For the purposes of the Act, section 8(2)(c), a spray paint can is properly secured if it is displayed on a shelf that is 2.1 metres or more above floor level.
- (2) The Act, Section 8 does not apply to or in relation to a spray paint can that contains paint that, when applied to a surface, is both transparent and colourless.

11 Penalty notices for offences relating to sale or display of spray paint cans

- (1) For the purposes of the Act, section 16(3), the amount prescribed is \$550.
- (2) The following classes of persons are prescribed as classes of persons who may issue penalty notices under the Act, section 16—
 - (a) investigators, within the meaning of the *Fair Trading Act 1987*,
 - (b) employees of a local council who are authorised persons for the purposes of the *Local Government Act 1993*, section 679.

12 Repeal and savings

- (1) The *Graffiti Control Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Graffiti Control Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.