

Passed by both Houses



New South Wales

Graffiti Legislation Amendment Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Graffiti Legislation Amendment Bill 2012

Act No , 2012

An Act to amend the *Graffiti Control Act 2008* and other Acts to make further provision with respect to the punishment of graffiti offences and removal or obliteration of graffiti; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Graffiti Legislation Amendment Act 2012*.

2 Commencement

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

Schedule 1 Amendment of Acts and Regulation

1.1 Children (Community Service Orders) Act 1987 No 56

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

graffiti offence means an offence under the *Graffiti Control Act 2008*.

[2] Section 5 Making of children's community service orders

Insert "in respect of a person who has pleaded guilty to, or been found guilty or convicted of, an offence other than a graffiti offence" after "section" in section 5 (1A).

[3] Section 5 (1A), note

Insert at the end of section 5 (1A):

Note. See section 11 (3) in relation to community service orders in relation to graffiti offences.

[4] Section 11 Conditions of children's community service order

Insert after section 11 (2):

- (3) Except as provided by subsection (4), a community service order in respect of a person who has pleaded guilty to, or been found guilty or convicted of, a graffiti offence must impose a graffiti clean up condition.

Note. See also section 79 of the *Fines Act 1996* for imposition of graffiti clean up conditions on fine defaulters in respect of graffiti offences.

- (4) Without limiting section 9, the court is not required to impose a graffiti clean up condition if the court considers that it is not in the circumstances of the case reasonably practicable for work of that kind to be performed by the person.
- (5) The court must make a record of its reasons for deciding not to impose a graffiti clean up condition.
- (6) In this section:
graffiti clean up condition means a condition requiring the offender to perform the following kind of community service work:
- (a) the removal of graffiti from buildings, vehicles, vessels and places,

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

[5] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Graffiti Legislation Amendment Act 2012, to the extent that it amends this Act

[6] Schedule 1, clause 5

Insert after clause 4:

5 Provision consequent on enactment of Graffiti Legislation Amendment Act 2012

The amendments made by the *Graffiti Legislation Amendment Act 2012* apply to community service orders made in relation to offences committed after the commencement of the amendments.

1.2 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

graffiti offence means an offence under the *Graffiti Control Act 2008*.

[2] Section 90 Conditions of community service orders

Insert after section 90 (4):

- (5) Except as provided by subsection (6), a community service order in relation to an offender who has been found guilty of a graffiti offence must impose a graffiti clean up condition.
- (6) The court is not required to impose a graffiti clean up condition if the court considers that it is not in the circumstances of the case reasonably practicable for work of that kind to be performed by the offender.
- (7) The court must make a record of its reasons for deciding not to impose a graffiti clean up condition.

- (8) In this section:
graffiti clean up condition means a condition requiring the offender to perform community service work of the following kind:
- (a) the removal or obliteration of graffiti from buildings, vehicles, vessels and places,
 - (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them.

[3] Section 91 Removal of graffiti

Insert “in relation to an offence other than a graffiti offence” after “order”.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Graffiti Legislation Amendment Act 2012 (but only to the extent that it amends this Act)

[5] Schedule 2, Part 22

Insert after Part 21:

**Part 22 Provision consequent on enactment of
Graffiti Legislation Amendment Act 2012**

63 Conditions of community service orders

The amendments made by the *Graffiti Legislation Amendment Act 2012* apply to community service orders made in relation to offences committed after the commencement of the amendments.

1.3 Fines Act 1996 No 99

[1] Section 79 Making of community service order against fine defaulter

Insert after section 79 (6):

- (6A) Subject to this Division, section 11 of the *Children (Community Service Orders) Act 1987* applies to a community service order under this Act requiring a fine defaulter to perform community

service work in relation to a graffiti offence within the meaning of that Act in the same way as it applies to a community service order under that Act.

Note. Section 11 of the *Children (Community Service Orders) Act 1987* requires a community service order to require the offender to perform graffiti clean up.

[2] Section 79 (7)

Omit “subsection (6)”. Insert instead “subsections (6) and (6A)”.

1.4 Graffiti Control Act 2008 No 100

[1] Part 4A

Insert after Part 4:

Part 4A Alternative and additional actions to imposing penalties for certain graffiti offences

13A Definitions

In this Part:

Authority means the Roads and Traffic Authority.

demerit points register has the same meaning as it has in the Driver Licensing Act.

driver licence means a driver licence within the meaning of the Driver Licensing Act other than a driver licence issued under a law of another State or a Territory.

driver licence order—see section 13C.

Driver Licensing Act means the *Road Transport (Driver Licensing) Act 1998*.

graffiti licence order means an order under section 13C (1) (b).

graffiti licence order period—see section 13C (1) (b).

learner licence means a learner licence within the meaning of the Driver Licensing Act.

learner licence period, in relation to a learner licence held by a person, means the minimum period for which the person is required by a condition imposed by the regulations under the Driver Licensing Act to hold the learner licence before a provisional licence may be issued.

provisional licence means a provisional licence within the meaning of the Driver Licensing Act other than a provisional licence issued under a law of another State or a Territory.

provisional licence period, in relation to a provisional licence held by a person, means the minimum period for which the person is required, pursuant to the regulations under the Driver Licensing Act, to hold the provisional licence before being eligible to apply for a provisional P2 licence or an unrestricted licence (as the case requires).

Note. The scheme under Subdivisions 1 and 2 of Division 2 of Part 3 of the *Road Transport (Driver Licensing) Regulation 2008* requires a person to hold a provisional licence (that is, a P1 licence followed by a P2 licence) for a total period of 36 months before the person can be issued with an unrestricted licence. If a court takes action under this Part, the total period will in effect be extended to up to 42 months.

unrestricted licence means a driver licence or driver licence receipt issued under the Driver Licensing Act that is not a learner licence or a provisional licence.

13B Alternative and additional actions to imposing penalty for graffiti offences under sections 4 and 5

- (1) A court may, instead of imposing a fine on a person for an offence under section 4 (Damaging or defacing property by means of graffiti implement) or 5 (Possession of graffiti implement), make a community service order under the *Crimes (Sentencing Procedure) Act 1999* or the *Children (Community Service Orders) Act 1987* directing the person to perform community service work, as the case requires.

Note. Community service orders made under the Acts referred to in this subsection may also be made instead of imposing sentences of imprisonment. Community service orders under those Acts in relation to graffiti offences are generally required to be made subject to graffiti clean up conditions.

- (2) A court may, in addition to or instead of imposing a fine on a person, sentencing the person to imprisonment or imposing any other penalty on the person for an offence under section 4 or 5, make a driver licence order.

Note. For example, a driver licence order might be imposed in addition to graffiti clean up conditions in relation to community service orders imposed instead of imprisonment for graffiti offences under the *Crimes (Sentencing Procedure) Act 1999* or the *Children (Community Service Orders) Act 1987*.

13C Driver licence orders

- (1) A court may make any of the following orders (*driver licence orders*) under section 13B (2):
 - (a) if the person is the holder of a learner licence or provisional licence—an order extending the person's learner licence period or provisional licence period, respectively, for a period of 6 months, or a lesser period specified in the order, with effect from the day on which the learner licence period or provisional licence period would otherwise end,
 - (b) an order requiring the person not to incur the same or more than the threshold number of demerit points applying to the person under section 13E for a period of 6 months or a lesser period specified in the order, commencing on the day on which the order is made (the *graffiti licence order period*).
- (2) A court must not make an order under subsection (1) (b) if 10 or more demerit points have been recorded against the person in the demerit points register during the 3 year period immediately before the order is made.

13D Orders extending learner and provisional licence periods

- (1) The extension of a person's learner or provisional licence period by an order under section 13C, in the case of a person who holds more than one class of driver licence, applies only to those classes of licence specified by the court.
- (2) If, in the case of a learner licence or provisional licence that is subject to an extension under section 13C, the licence is cancelled at any time by operation of section 189 of the *Road Transport (General) Act 2005*, the learner licence period or provisional licence period in respect of any subsequent learner licence or provisional licence that is issued to the person is extended by operation of this subsection for a period that is equivalent to so much of the period by which the licence was extended as remained on the day the licence was cancelled.
- (3) The period for which a person's learner licence or provisional licence period may be extended by an order under section 13C does not include any period during which the person's learner licence or provisional licence is suspended by the Authority otherwise than on medical grounds.

13E Graffiti licence orders

- (1) A graffiti licence order made in relation to a person who is the holder of an unrestricted licence must specify the threshold number of demerit points to apply to the holder for the purposes of the Driver Licensing Act during the graffiti licence order period.

Note. See section 16AB of the *Road Transport (Driver Licensing) Act 1998* with respect to licence suspension when the threshold number of demerit points is incurred.

- (2) In subsection (1), *threshold number of demerit points* means 4 demerit points or such other number of demerit points as may be prescribed by the regulations.

13F Explanation of nature and effect of driver licence order

- (1) A court that makes a driver licence order in respect of a person must explain, or cause to be explained, to the offender (in language likely to be readily understood by the person):
 - (a) the requirements to be complied with by the person under the order, and
 - (b) the consequences that may follow if the person fails to comply with those requirements.
- (2) A driver licence order is not invalidated by a failure to comply with this section.

13G Provisions relating to imposition of penalties for offences under sections 4 and 5

- (1) A court is to take into account a statement of the driving record of a person in making a driver licence order in relation to a licence held by the person.
- (2) A court is to notify the Authority of the making, and terms, of any driver licence order it makes under this Part as soon as practicable after the order is made.
- (3) If a finding of guilt, conviction or sentence in respect of an offence under section 4 or 5 is quashed, annulled or set aside, any driver licence order made in respect of the offence is revoked.
- (4) A driver licence order is not invalidated by a failure to comply with this section.

[2] Section 15 Alternative action to imposing penalty for graffiti offences under sections 4 and 5

Omit the section.

[3] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Graffiti Legislation Amendment Act 2012, to the extent that it amends this Act

[4] Schedule 1, Part 4

Insert after Part 3:

**Part 4 Provision consequent on enactment of
Graffiti Legislation Amendment Act 2012**

4 Application of amendments

An amendment made to this Act by the *Graffiti Legislation Amendment Act 2012* that provides for the making of a driver licence order in respect of an offence under this Act applies in respect of an offence committed after the commencement of the amendment.

1.5 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 16AB

Insert after section 16AA:

16AB Suspension of licence—graffiti licence orders

- (1) If a person who is subject to a graffiti licence order made under section 13C (1) (b) of the *Graffiti Control Act 2008* incurs the same or more than the threshold number of demerit points applying to the person during the graffiti licence order period under the order, the Authority must give the person a notice suspending all driver licences held by the person, commencing on a day specified in the notice, for a period that is equivalent to the graffiti licence order period.

Note. At the commencement of this section, section 13E (2) of the *Graffiti Control Act 2008* required a graffiti licence order to specify the threshold number of demerit points as 4 demerit points.

- (2) On the commencement of the period of suspension referred to in subsection (1), all demerit points recorded in the demerit points register against the person during the graffiti licence order period at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (3) Nothing in subsection (2) affects any demerit points incurred by the person before the beginning of the graffiti licence order

period and any such points are to be taken into account for the purposes of section 16 (2) or 16A (1) from the end of the suspension period.

- (4) Nothing in subsection (2) prevents the Authority from retaining records of deleted demerit points incurred by any person.

[2] Section 20 Driver licensing system

Insert after section 20 (2) (m1):

- (m2) make provision for or with respect to driver licences the subject of graffiti licence orders under the *Graffiti Control Act 2008*, and

[3] Section 33A Effect of expiry of driver licence during suspension period

Insert “16AB,” after “16A,”.

1.6 Road Transport (Driver Licensing) Regulation 2008

Clause 31C Authority may extend provisional licence period

Insert “under this clause” after “extended” in clause 31C (7).

1.7 Young Offenders Act 1997 No 54

[1] Section 4 Definitions

Insert in alphabetical order:

graffiti offence means an offence committed under the *Graffiti Control Act 2008*.

[2] Section 13 Offences for which warnings may be given

Omit “other than an”. Insert instead “other than a graffiti offence or any other”.

[3] Section 18

Omit the section. Insert instead:

Division 1 Cautions by persons other than courts

18 Offences for which cautions may be given

A caution may be given for an offence covered by this Act, other than a graffiti offence or any other offence prescribed by the regulations for the purposes of this section.

Note. Section 8 sets out offences covered by this Act. Under section 31, a court may give a caution for a graffiti offence.

[4] Part 4, Division 2, heading

Insert after section 30:

Division 2 Cautions by courts

[5] Section 31 Cautions by courts

Omit “this Part” from section 31 (1) (a).

Insert instead “Division 1 or is a graffiti offence”.

[6] Part 4, Division 3, heading

Insert after section 31:

Division 3 Cautions generally

[7] Section 37 Entitlement to be dealt with by conference

Insert “(other than a graffiti offence)” after “offence” in section 37 (1).

[8] Section 38 Determinations by specialist youth officers

Insert “(other than a graffiti offence)” after “alleged offence” in section 38 (1).

[9] Section 38 (2)

Omit “should”. Insert instead “can and should”.

[10] Section 38 (2), note

Insert at the end of section 38 (2):

Note. Graffiti offences cannot be dealt with by caution except by a court—see section 18.

[11] Section 40 Referrals for conferences by DPP and courts

Omit section 40 (1). Insert instead:

- (1) The Director of Public Prosecutions may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
 - (a) the offence is one (other than a graffiti offence) for which a conference may be held, and
 - (b) the child admits the offence, and
 - (c) the child consents to the holding of the conference, and
 - (d) the Director is of the opinion that a conference should be held under this Part.

- (1A) A court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
- (a) the offence is one for which a conference may be held, and
 - (b) the child admits the offence, and
 - (c) the court is of the opinion that a conference should be held under this Part.

[12] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Graffiti Legislation Amendment Act 2012, to the extent that it amends this Act

[13] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Graffiti Legislation Amendment Act 2012**

7 Application of amendments

- (1) In this Part:
amending Act means the *Graffiti Legislation Amendment Act 2012*.
- (2) An amendment made to this Act by the amending Act relating to the giving of cautions or warnings with respect to an offence committed under the *Graffiti Control Act 2008* applies in respect of an offence committed after the commencement of the amendment.