

Graffiti Control Act 2008 No 100

[2008-100]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Graffiti Control Amendment Act 2009 No 94](#), Sch 1 [7] (not commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Graffiti Control Act 2008 No 100



New South Wales

An Act with respect to the minimisation and control of graffiti; to amend the [Summary Offences Act 1988](#) and certain other legislation; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the [Graffiti Control Act 2008](#).

2 Commencement

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

3 Definitions

(1) In this Act:

exercise a function includes perform a duty.

function includes a power, authority or duty.

graffiti implement means any of the following:

- (a) spray paint,
- (b) a marker pen,
- (c) any implement designed or modified to produce a mark that is not readily removable by wiping or by use of water or detergent.

premises includes the whole or any part of a structure, building, vehicle, vessel or place, whether built on or not.

property includes a tree.

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.

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

vehicle includes:

- (a) a motor vehicle (whether or not still capable of being driven), and
- (b) a train or other vehicle used on a railway or monorail, and
- (c) a trailer or anything else constructed to be drawn by a vehicle or animal.

(2) Notes included in this Act do not form part of this Act.

Part 2 Graffiti related offences

4 Damaging or defacing property by means of graffiti implement

- (1) A person must not, without reasonable excuse (proof of which lies on the person), intentionally damage or deface any premises or other property by means of any graffiti implement.

Maximum penalty: 20 penalty units or imprisonment for 12 months.

- (2) 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 5 (or under the corresponding provisions of the [Summary Offences Act 1988](#) as in force before their repeal by this Act) 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.

Note—

The corresponding provisions of the [Summary Offences Act 1988](#), before their repeal by this Act, were sections 10A and 10B.

5 Possession of graffiti implement

- (1) A person must not have any graffiti implement in the person's possession with the intention that it be used to damage or deface premises or other property.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) 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 4 (or under the corresponding provisions of the [Summary Offences Act 1988](#) as in force before their repeal by this Act) 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.

- (3) 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 graffiti implement be forfeited to the Crown, and the graffiti implement is forfeited accordingly.

6 Posting bills and other marking offences

A person must not:

- (a) affix a placard or paper on any premises, or
- (b) intentionally mark, by means of chalk, paint or other material, any premises,

so that the placard, paper or marking is within view from a public place, unless the person first obtained the consent, if the premises are occupied, of the occupier or person in charge of the premises or if the premises are unoccupied, of the owner or person in charge of the premises.

Maximum penalty: 4 penalty units.

Part 3 Sale, supply, possession and confiscation of spray paint cans

7 Sale of spray paint cans to persons under 18

- (1) A person who sells a spray paint can to a person under the age of 18 years is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) It is a defence (proof of which lies on the person selling the spray paint can) to a prosecution for an offence under this section that the person selling the spray paint can believed on reasonable grounds that the person to whom the spray paint can was sold was of or above the age of 18 years.
- (3) If an employee contravenes subsection (1), the employer is taken to have contravened that subsection, whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions.
- (4) It is a defence to a prosecution against an employer for such a contravention if it is proved:
 - (a) that the employer had no knowledge of the contravention, and
 - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (5) An employer may be proceeded against and convicted under subsection (1) by virtue of subsection (3) whether or not the employee has been proceeded against or convicted under subsection (1).
- (6) The regulations may provide that this section does not apply to or in relation to any

specified class or description of spray paint can.

8 Unsecured display by retailers of spray paint cans

- (1) The occupier of any shop from which spray paint cans are sold must not display any such can in any part of the shop to which members of the public are permitted access unless the can is properly secured in accordance with subsection (2).

Maximum penalty: 10 penalty units.

- (2) A spray paint can is properly secured if it is displayed:

(a) in a locked cabinet, or

(b) within or behind a counter in such a manner that members of the public are not able to gain access to the can without the assistance of the occupier or an employee or agent of the occupier, or

(c) in any other manner prescribed by the regulations.

- (3) The regulations may provide that this section does not apply to or in relation to any specified class or description of spray paint can.

- (4) The Minister is to review the operation of this section (including the corresponding provision of the *Summary Offences Act 1988* as in force before its repeal by this Act) as soon as possible after the period of 12 months following the date of commencement of this section.

Note—

The corresponding provision of the *Summary Offences Act 1988*, before its repeal by this Act, was section 10D.

- (5) In this section:

display includes store or keep.

occupier, in relation to a shop, means:

(a) a person who has the right to occupy the shop to the exclusion of the owner, or

(b) the person who is the owner of the shop if there is no person with a right to occupy the shop to the exclusion of the owner.

sell includes offer for sale or expose for sale.

shop includes any retail premises.

8A Supply of spray paint cans to persons under 18

- (1) A person who supplies a spray paint can to a person under the age of 18 years is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) It is a defence (proof of which lies on the person supplying the spray paint can) to a prosecution for an offence under this section that:
- (a) the person believed on reasonable grounds that the recipient intended to use the spray paint can for a defined lawful purpose, being the lawful pursuit of an occupation, education or training, or
 - (b) the supply occurred in a public place and the person believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of the place where the supply occurred for another defined lawful purpose, or
 - (c) the supply occurred in a private place and the person believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of the place where the supply occurred for an activity that does not constitute an offence against this Act or any other law.
- (3) In this section, a **defined lawful purpose** is:
- (a) the lawful pursuit of an occupation, education or training, or
 - (b) any artistic activity that does not constitute an offence against this Act or any other law, or
 - (c) any construction, renovation, restoration or maintenance activity that does not constitute an offence against this Act or any other law, or
 - (d) any other purpose authorised by the regulations.
- (4) The regulations may provide that this section does not apply to or in relation to any specified class or description of spray paint can.

- (5) In this section:

private place means any place that is not a public place.

public place means:

- (a) a place (whether or not covered by water), or
- (b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include the premises of a school or other educational establishment.

8B Possession of spray paint cans by persons under 18

- (1) A person under the age of 18 years who is in possession of a spray paint can in a public place is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) It is a defence (proof of which lies on the person in possession of the spray paint can) to a prosecution for an offence under this section that the person:
- (a) had the spray paint can in his or her possession for a defined lawful purpose, being the lawful pursuit of an occupation, education or training, or
 - (b) had the spray paint can in his or her possession for another defined lawful purpose and was at or in the immediate vicinity of the place where the spray paint can was being used or intended to be used for that defined lawful purpose.
- (3) In this section, a **defined lawful purpose** is:
- (a) the lawful pursuit of an occupation, education or training, or
 - (b) any artistic activity that does not constitute an offence against this Act or any other law, or
 - (c) any construction, renovation, restoration or maintenance activity that does not constitute an offence against this Act or any other law, or
 - (d) any other purpose authorised by the regulations.
- (4) The regulations may provide that this section does not apply to or in relation to any specified class or description of spray paint can.
- (5) 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 under section 4 or 5 (or under a repealed provision of the [Summary Offences Act 1988](#) that corresponded to section 4 or 5), 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.

Note—

The corresponding provisions of the [Summary Offences Act 1988](#) to sections 4 and 5, before their repeal by this Act, were sections 10A and 10B.

- (6) In this section:

public place means:

- (a) a place (whether or not covered by water), or
- (b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include the premises of a school or other educational establishment.

9 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's possession of the spray paint can does not constitute an offence under this Act.
- (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.
- (5) In this section:

public place means:

- (a) a place (whether or not covered by water), or
- (b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include the premises of a school or other educational establishment.

Part 4 Graffiti removal work by local councils

10 Interpretation

In this Part, **occupier**, **owner**, **private land** and **public place** have the same meanings as in the [Local Government Act 1993](#).

11 Graffiti removal work—by agreement with owner or occupier

A local council may, by agreement with the owner or occupier of any private land, carry out graffiti removal work on the land.

12 Graffiti removal work—without agreement of owner or occupier

- (1) A local council may, without the agreement of the owner or occupier of any land, carry out graffiti removal work to property on that land if the graffiti concerned is visible from a public place.
- (2) The graffiti removal work referred to in subsection (1) may only be carried out from a public place.
- (3) The local council concerned is to bear the cost of graffiti removal work referred to in subsection (1).
- (4) If a local council carries out graffiti removal work in accordance with this section, the council must, within a reasonable period, give the owner or occupier of the land concerned written notice that the work has occurred.
- (5) A local council must pay compensation for any damage caused by the council in carrying out graffiti removal work in accordance with this section.

Note—

Section 730 of the [Local Government Act 1993](#) provides for the resolution of claims for compensation relating to damage under this section in cases of dispute between the person claiming the compensation and the council.

13 Register of graffiti removal work

- (1) A local council must keep a register of graffiti removal work carried out in accordance with this Part.
- (2) The register is to specify in respect of each incidence of graffiti removal work carried out:
 - (a) the owner or occupier of the premises on which the graffiti was situated, and
 - (b) the nature of the work carried out, and
 - (c) the actual cost, or an estimate of the cost at current market rates, of carrying out the work, and
 - (d) in the case of graffiti removal work carried out in accordance with section 11—the actual amount charged by the local council for carrying out the work.

Part 5 Miscellaneous

14 General defence

It is a sufficient defence to a prosecution for an offence under this Act if the defendant satisfies the court that the act complained of in the information for the offence was done with lawful authority.

15 Alternative action to imposing penalty for graffiti offences under sections 4 and 5

A court may, instead of imposing a fine on a person or sentencing the person to imprisonment for an offence under section 4 (Damaging or defacing property by means of graffiti implement) or 5 (Possession of graffiti implement):

- (a) make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, being an order containing a recommendation of the kind referred to in section 91 of that Act, or
- (b) 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.

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

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under section 7 (Sale of spray paint cans to persons under 18) or 8 (Unsecured display by retailers of spray paint cans).
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount prescribed by the regulations for an alleged offence under section 7 or 8 is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Any such amount prescribed by the regulations for an offence under section 7 or 8 is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (7) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (8) In this section, **authorised officer** means:
- (a) a police officer, or
 - (b) a person of a class prescribed by the regulations as a class of person who may issue penalty notices under this section.

17 Particulars to be furnished

- (1) If a defendant charged with an offence under this Act:
- (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and
 - (b) the informant, or some person on his or her behalf, has not so furnished those particulars,
- the court before which the defendant is charged is to adjourn the charge pending the furnishing of those particulars or may dismiss the charge.
- (2) If, at the hearing of a charge for an offence referred to in subsection (1):
- (a) the evidence discloses behaviour or conduct that constitutes such an offence, and
 - (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),
- the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.

18 Payment towards cost of repairing damage

A person convicted of an offence under this Act is liable to pay such amount not exceeding an amount equal to 20 penalty units as the court may order as the cost of, or contribution to, the repair or restoration of any damage caused by the action which resulted in the conviction.

19 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

20 Proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Local

Court.

21 Savings, transitional and other provisions

Schedule 1 has effect.

22 (Repealed)

23 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 Savings, transitional and other provisions

(Section 21)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act
 - Graffiti Control Amendment Act 2009*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Graffiti removal work by local councils

- (1) Anything done by a local council under section 67A or 67B of the *Local Government Act 1993* is, to the extent that it had effect immediately before the repeal of those sections by this Act, taken to have been done and to have effect under Part 4 of this Act.
- (2) A register of graffiti removal work kept in accordance with section 67C of the *Local Government Act 1993* (as in force immediately before its repeal by this Act) is taken to be a register of graffiti removal work kept in accordance with section 13 of this Act.

Part 3 Provisions consequent on enactment of **Graffiti Control Amendment Act 2009**

3 Application of amendments

- (1) An amendment made to this Act by the *Graffiti Control Amendment Act 2009* that increases the penalty for an offence against this Act applies in respect of an offence committed on or after the commencement of the amendment.
- (2) A community clean up order may be made under Part 3A, as inserted by the *Graffiti Control Amendment Act 2009*, in respect of a graffiti offence only if it is committed on or after the commencement of that Part.

Schedule 2 (Repealed)