

# 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**  
[Crimes \(Sentencing Procedure\) Amendment \(Sentencing Options\) Act 2017 No 53](#) (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](#).

File last modified 14 January 2018

# Graffiti Control Act 2008 No 100



New South Wales

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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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

## Part 2 Graffiti related offences

### 4 Marking premises or property

- (1) A person must not, without reasonable excuse (proof of which lies on the person), intentionally mark any premises or other property, unless the person has first obtained the consent of the following:
  - (a) in relation to premises that are occupied—the occupier or person in charge of the premises,
  - (b) in relation to premises that are unoccupied or other property—the owner or person in charge of the premises or property.

Maximum penalty: 4 penalty units.

- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.

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

- (3) For the purposes of this section, a person commits an offence in **circumstances of aggravation** if the person intentionally marks the premises or other property:
  - (a) by means of any graffiti implement, or
  - (b) in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.
- (4) A court that convicts a person of an offence under subsection (2) 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 section 10A or 10B 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.

- (5) Subsection (1) does not apply to the marking of any public footpath or public pavement with chalk, including, but not limited to, marking out a hopscotch or handball court with chalk.

## **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 commit an offence under section 4 (2).

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 (2) (or under section 10A or 10B 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**

A person must not intentionally affix a placard or paper on any premises so that the placard or paper is within view from a public place, unless the person has first obtained the consent of the following:

- (a) if the premises are occupied—the occupier or person in charge of the premises,  
(b) if the premises are unoccupied—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 be 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 (2) or 5 (or under section 10A or 10B 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.
- (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 3A Community clean up work

### 9A Definitions

In this Part:

**adult offender** means an offender who is not a child offender.

**assigned officer** in respect of a community clean up order means the assigned officer under the [Children \(Community Service Orders\) Act 1987](#) or the [Crimes \(Administration of Sentences\) Act 1999](#), as the case requires.

**child offender** means an offender in relation to a graffiti offence who:

- (a) was under the age of 18 years when the graffiti offence was committed, and
- (b) was under the age of 21 years when charged before a court with the graffiti offence.

**community clean up order** means an order under this Part requiring a person to perform community clean up work.

**community clean up work**—see section 9C.

**fine** has the same meaning as in the [Fines Act 1996](#).

**graffiti offence** means an offence under this Act.

**offender** means a person who has pleaded guilty to a graffiti offence in a court or who has been found guilty of or convicted of a graffiti offence by a court.

### 9B Making of order for community clean up work

- (1) A court that imposes a fine on an offender for a graffiti offence may make an order requiring the offender to perform community clean up work in order to satisfy the amount of the fine.

- (1A) A community clean up order may be made:

- (a) on the application of the prosecutor or the offender, or
  - (b) on the court's own motion.
- (2) A community clean up order may be made by the court at the time that the fine is imposed or at a later time.
- (3) A community clean up order may be made even if part of the fine has been paid (in which case it applies to the part of the fine that remains unpaid).
- (4) However, a community clean up order is not to be made in respect of a fine if it has been fully paid or the matter has been referred to the Commissioner of Fines Administration for the making of a court fine enforcement order under the *Fines Act 1996*.

**Note—**

A matter can be referred to the Commissioner of Fines Administration for the making of a court fine enforcement order if the fine has not been paid by the due date.

- (5) For the avoidance of doubt, an application for a community clean up order may be made:
- (a) before or at the time the court imposes the fine for the graffiti offence, or
  - (b) at any other time after the fine has been imposed but before the fine has been fully paid or referred to the Commissioner of Fines Administration for the making of a court fine enforcement order under the *Fines Act 1996*.

**9C Community clean up work—meaning**

- (1) In this Part, **community clean up work** means any community service work under the *Children (Community Service Orders) Act 1987* or the *Crimes (Administration of Sentences) Act 1999* that is approved by the relevant Minister as community clean up work for the purposes of this Act.
- (2) The relevant Minister is:
- (a) in the case of a community clean up order made in respect of a child offender, the Minister administering the *Children (Community Service Orders) Act 1987*, or
  - (b) in the case of a community clean up order made in respect of an adult offender, the Minister administering the *Crimes (Administration of Sentences) Act 1999*.

**9D Order to be made only if offender suitable and community clean up work available**

- (1) A court must not make a community clean up order unless satisfied, following consultation with an authorised officer, that:
- (a) the offender is a suitable person for community clean up work and, in the case of a child offender, is sufficiently mature to perform community clean up work, and

- (b) arrangements exist for persons who reside in the area in which the offender resides or intends to reside for the offender to perform community clean up work, and
  - (c) community clean up work can be provided in accordance with those arrangements.
- (2) In deciding whether to make a community clean up order, the court must have regard to whether the offender is willing to participate in community clean up work.
- (3) For the purposes of this section, an **authorised officer** means:
- (a) in respect of an adult offender—the Commissioner of Corrective Services, Department of Justice and Attorney General or an officer of the Department authorised by the Commissioner to exercise the functions of an authorised officer under this section, or
  - (b) in respect of a child offender—the Director-General of the Department of Human Services or an officer of the Department authorised by the Director-General to exercise the functions of an authorised officer under this section.

#### **9E Notice of order**

- (1) As soon as practicable after making a community clean up order, the court is to cause written notice of the order to be given to the following persons:
- (a) the offender,
  - (b) if the offender is an adult offender—the Commissioner of Corrective Services, Department of Justice and Attorney General,
  - (c) if the offender is a child offender—the Director-General of the Department of Human Services,
  - (d) if the offender is a child offender and the order is made by a court other than the Children’s Court—the registrar of the Children’s Court.
- (2) The notice must include the following information:
- (a) the place at which, or person to whom, the offender must present himself or herself, in person, for the purpose of enabling the administration of the order to be commenced,
  - (b) the period within which the offender must so present himself or herself.
- (3) A community clean up order is not invalidated by a failure to comply with this section.

**9F Explanation of nature and effect of order**

- (1) A court that makes a community clean up order in respect of an offender must explain, or cause to be explained, to the offender (in language likely to be readily understood by the offender):
  - (a) the requirements to be complied with by the offender under the order, and
  - (b) the consequences that may follow if the offender fails to comply with those requirements, and
  - (c) the fact that the order may also be satisfied by payment of the fine.
- (2) A community clean up order is not invalidated by a failure to comply with this section.

**9G Number of hours of community clean up work**

- (1) The number of hours of community clean up work, specified in a community clean up order, to be performed by the offender is to be calculated at the rate of 1 hour for each \$30 of the amount of the fine (or that part of the fine that is unpaid).
- (2) The number of hours specified in any one order is additional to any number of hours of community clean up work or community service work required to be performed by the offender under any other order. Accordingly, any limit on the total number of hours of community service work that a person may be required to perform at any one time under another Act does not apply to any hours required to be performed by an offender under a community clean up order.
- (3) The number of hours specified in any one community clean up order must not exceed 300 hours (in the case of an adult offender) or 100 hours (in the case of a child offender). The offender may be subject to more than one community clean up order at any one time.
- (4) In the case of a person who is a child offender at the time a community clean up order is made, community clean up work may be performed concurrently for the purposes of that order and for the purposes of any other community clean up order or community service order made otherwise than under this Part.

**9H Offender must participate in graffiti prevention program**

- (1) The community clean up work that an offender is directed to do by the assigned officer under the community clean up order must, if practicable, include at least 2 hours participation in a graffiti prevention program.
- (2) For the purposes of this section, a **graffiti prevention program** means a personal development, education or other program the object of which is to prevent offenders from engaging in unlawful graffiti activities.

- (3) An offender cannot be required by a community clean up order to participate in any personal development, education or other program that is not a graffiti prevention program.

**9I Satisfaction of fine by community clean up work**

- (1) If an offender who is subject to a community clean up order duly complies with the order, the fine concerned is taken to be satisfied.
- (2) If an offender who is subject to a community clean up order duly performs part of the number of hours of community clean up work to be performed under the order, the fine concerned is taken to be satisfied by the amount calculated at the rate of \$30 for each hour of community clean up work actually performed.

**9J Satisfaction of orders by payment**

- (1) If an offender who is subject to a community clean up order duly pays the fine (or the unsatisfied balance of the fine having regard to the number of hours of community clean up work already performed) the order is taken to be satisfied.
- (2) A community clean up order ceases to be in force when it is satisfied.

**9K Revocation of community clean up order**

- (1) A court may revoke a community clean up order if it is satisfied, following a report by the assigned officer in respect of the community clean up order, that the offender who is the subject of the order:
  - (a) has failed to report for work under the order within the period of 3 months after being required to do so by the order, or
  - (b) has failed to report for work under the order within any period of 3 months, or
  - (c) has failed to comply with the requirements of the order, or
  - (d) is not capable of performing the work under the order, or
  - (e) is not suitable to be engaged in the work under the order.
- (2) A court may also revoke a community clean up order on the request of the offender subject to the order if satisfied that it would be in the interests of justice to revoke the order.
- (3) A court may revoke a community clean up order in the absence of the offender subject to the order.
- (4) However, a court is not to revoke a community clean up order unless satisfied that the offender has been given notice of the application for revocation and an opportunity to make submissions in respect of the application.



- (5) A court may, when revoking an order, also revoke other community clean up orders that have been made against the offender.
- (6) A community clean up order may be revoked by the court that made it or by a court of like or superior jurisdiction.
- (7) A community clean up order in respect of which the Children's Court is the supervising court may be revoked by the Children's Court even though the Children's Court did not make the order.

**9L Effect of appeal against conviction or sentence**

- (1) If a finding of guilt, conviction, or sentence in respect of a graffiti offence is quashed, annulled or set aside, any community clean up order made in respect of the fine imposed for the offence is revoked.
- (2) If a fine imposed by a court is varied, the court that varies the fine may revoke or vary any community clean up order made in respect of the fine. In such a case, the court may exercise any functions that could have been exercised by the court that imposed the fine.

**9M Notice of revocation or variation of community clean up order**

A court that revokes or varies a community clean up order is to cause notice of the revocation or variation to be given to the following persons:

- (a) the offender,
- (b) the offender's assigned officer,
- (c) if the offender is a child offender and the court is not the Children's Court—the registrar of the Children's Court.

**9N No appeals against order**

An appeal does not lie in respect of the making of a community clean up order, a failure to make a community clean up order or the revocation or variation of a community clean up order.

**9O Registrar of court may exercise functions of court**

- (1) The functions of a court under this Part with respect to the making of a community clean up order may be exercised by a registrar of the court, if the offender consents to the making of the order.
- (2) The functions of a court under this Part with respect to the revocation of a community clean up order may be exercised by a registrar of the court.

**9P Application of [Children \(Community Service Orders\) Act 1987](#) to orders made in**

**respect of child offenders**

- (1) The *Children (Community Service Orders) Act 1987* applies, subject to this Part, in respect of a community clean up order made in respect of a child offender in the same way as it applies in respect of a children's community service order made in respect of a person to whom that Act applies.
- (2) The following provisions of the *Children (Community Service Orders) Act 1987* do not apply to a community clean up order:
  - (a) sections 5, 6, 9, 12, 13 and 14, Part 4, and sections 27 and 28,
  - (b) such other provisions of that Act as may be prescribed by the regulations under this Act.

**Note—**

The excluded provisions are generally provisions that duplicate, or are inconsistent with, the provisions of this Part.

- (3) The provisions of any regulation made under the *Children (Community Service Orders) Act 1987* apply in respect of a community clean up order to the extent that those provisions have effect for the purposes of provisions of that Act that apply to a community clean up order.
- (4) The regulations under this Act may modify the operation of the *Children (Community Service Orders) Act 1987* or the regulations under that Act in respect of a community clean up order.

**9Q Application of sentencing legislation to orders made in respect of adult offenders**

- (1) The *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* apply, subject to this Part, in respect of a community clean up order made in respect of an adult offender in the same way as they apply in respect of a community service order made in respect of a person under the *Crimes (Sentencing Procedure) Act 1999*.
- (2) The following provisions do not apply to a community clean up order:
  - (a) Divisions 2 and 3 of Part 7 and sections 90 (2) (b) and (3), 91, 92 and 93 of the *Crimes (Sentencing Procedure) Act 1999*,
  - (b) sections 113, 114, 115 and 116 of the *Crimes (Administration of Sentences) Act 1999*,
  - (c) such other provisions of the *Crimes (Sentencing Procedure) Act 1999* or the *Crimes (Administration of Sentences) Act 1999* as may be prescribed by the regulations under this Act.

**Note—**

The excluded provisions are generally provisions that duplicate, or are inconsistent with, the provisions of this Part.

- (3) The provisions of any regulation made under the *Crimes (Sentencing Procedure) Act 1999* or the *Crimes (Administration of Sentences) Act 1999* apply in respect of a community clean up order to the extent that those provisions have effect for the purposes of provisions of those Acts that apply to a community clean up order.
- (4) The regulations under this Act may modify the operation of the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* or the regulations under those Acts in respect of community clean up orders.

**9R Regulations**

- (1) The regulations may make further provision for or with respect to community clean up work and community clean up orders (including applications for community clean up orders).
- (2) The regulations may increase the amount of \$30 mentioned in sections 9G and 9I. If the regulations do so, the reference to the amount of \$30 in those sections is to be construed as a reference to that increased amount.

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

### **13A Definitions**

In this Part:

**Authority** means the Roads and Maritime Services.

**demerit points register** means the NSW demerit points register within the meaning of the [Road Transport Act 2013](#).

**driver licence** means a driver licence within the meaning of the [Road Transport Act 2013](#) other than a driver licence issued under a law of another State or a Territory.

**driver licence order**—see section 13C.

**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 *Road Transport Act 2013*.

**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 statutory rules under the *Road Transport Act 2013* to hold the learner licence before a provisional licence may be issued.

**provisional licence** means a provisional licence within the meaning of the *Road Transport Act 2013* 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 statutory rules under the *Road Transport Act 2013*, 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 2017* 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 *Road Transport Act 2013* that is not a learner licence or a provisional licence.

**13B Alternative and additional actions to imposing penalty for graffiti offences under sections 4 (2) and 5**

(1) A court may, instead of imposing a fine on a person for an offence under section 4 (2) or 5, 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 (2) 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 207 of the [Road Transport Act 2013](#), 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 [Road Transport Act 2013](#) during the graffiti licence order period.

**Note—**

See section 38 of the [Road Transport Act 2013](#) 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.

## **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 (Repealed)**

### **16 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed an offence against section 7 or 8 of this Act.
- (2) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (3) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (4) 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.
- (5) 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 persons 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:

- (a) may be dealt with summarily before the Local Court, and
- (b) must be commenced not later than 2 years from when the offence is alleged to have been committed.

## **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 10 December 2015 (being 3 years after the date of commencement of the [Graffiti Legislation Amendment Act 2012](#)).
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after that date.

## **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 this Act or any Act that amends this Act.
- (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.

## **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.

## **Schedule 2 (Repealed)**