



New South Wales

Graffiti Control Regulation 2009

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*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The objects of this Regulation are as follows:

- (a) to set out the procedure to be followed in regard to the seizure of spray paint cans under section 9 of the *Graffiti Control Act 2008* (*the Act*) and the procedure to be followed after their seizure,
- (b) to make provision with respect to 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,
- (d) to prescribe investigators under the *Fair Trading Act 1987* as a class of persons who (in addition to police officers) may issue penalty notices.

This Regulation is made under the *Graffiti Control Act 2008*, including sections 8, 9, 16 and 19 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a machinery nature.

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Graffiti Control Regulation 2009

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Graffiti Control Regulation 2009

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Graffiti Control Regulation 2009*.

2 Commencement

This Regulation commences on 20 February 2009.

3 Definition

In this Regulation:

the Act means the *Graffiti Control Act 2008*.

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Clause 4 Graffiti Control Regulation 2009

Part 2 Seized spray paint cans

Part 2 Seized spray paint cans

4 Reasons for seizure

- (1) When seizing a spray paint can under section 9 of the Act (referred to in this Part as a *seized spray paint can*), a police officer must give reasons for the seizure.
- (2) For that purpose, the police officer must tell the person from whom the spray paint can is seized that the police officer:
 - (a) suspects that the person is under the age of 18 years, and
 - (b) is not satisfied that the person has the spray paint can in his or her possession for a purpose that is not unlawful.

5 Disposal of seized spray paint cans

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

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

6 Information as to custody of seized spray paint can

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

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 appropriate police station and kept there for at least 7 days.
- (2) The appropriate police station is the one to which the person from whom the spray paint can was seized was informed it would be taken.
- (3) A seized spray paint can kept at a police station may be disposed of if a claim for its return under clause 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:
 - (a) the person establishes that the person was at least 18 years of age at the time of the seizure, or
 - (b) the person establishes that the person had the spray paint can in his or her possession for a purpose that is not unlawful (being a purpose of which the police officer who seized the spray paint can was informed at the time of its seizure).
- (2) If a claim for a seized spray paint can is rejected, the spray paint can must be kept for at least another 7 days (to allow for an application to be made to a court under clause 9) and may be disposed of if an application under that clause is not made within 7 days after the claim is rejected.
- (3) If an application under clause 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 that the person had the seized spray paint can in his or her possession at the time of its seizure for a purpose that was not unlawful (being a purpose of which the police officer who seized the spray paint can was informed at the time of its seizure).

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Clause 10 Graffiti Control Regulation 2009

Part 3 Miscellaneous

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10 Display by retailers of spray paint cans

- (1) For the purposes of section 8 (2) (c) of the Act, 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) Section 8 of the Act 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 section 16 (2) of the Act, the amount prescribed is \$550.
- (2) The class of persons consisting of investigators within the meaning of the *Fair Trading Act 1987* is, for the purposes of section 16 (8) of the Act, prescribed as a class or persons who may issue penalty notices under that section.

BY AUTHORITY
