



New South Wales

Graffiti Control Amendment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Graffiti Control Act 2008* (the *Principal Act*) to implement certain recommendations arising from the statutory review of that Act. In particular, the Bill:

- (a) replaces certain graffiti offences with a new two-tiered graffiti offence, and
- (b) clarifies how community clean up orders may be made, and
- (c) sets a maximum number of hours of community clean up work that may be specified in any one community clean up order, and
- (d) makes other amendments of a machinery, savings or transitional nature.

The Bill also makes a consequential amendment to the *Passenger Transport Regulation 2007*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Graffiti Control Act 2008 No 100

Schedule 1 [1] substitutes section 4 of the Principal Act (Damaging or defacing property by means of graffiti implement). The substituted section (Marking premises or property) creates a two-tiered offence, one being a basic offence in proposed section 4 (1) and the other being an offence committed in circumstances of aggravation in proposed section 4 (2).

The basic offence prohibits a person, without reasonable excuse (proof of which lies on the person), from intentionally marking any premises or other property, unless the person has first obtained the consent of:

- (a) if the premises are occupied—the occupier or person in charge of the premises, or
- (b) if the premises are unoccupied or in relation to other property—the owner or person in charge of the premises or property.

This basic offence carries a maximum penalty of 4 penalty units (currently \$440).

Proposed section 4 (2) and (3) provide that a person is guilty of a separate offence if the person commits the basic offence in circumstances of aggravation, being circumstances where the person has intentionally marked 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.

This aggravated offence carries a maximum penalty of 20 penalty units (currently \$2,200) or imprisonment for 12 months.

Schedule 1 [2], [3], [5], [6], [11] and [12] make consequential amendments.

Schedule 1 [4] substitutes section 6 of the Principal Act as a consequential amendment. The proposed section 6 no longer deals with marking premises as this is dealt with in proposed section 4.

Schedule 1 [7] makes it clear that 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.

Schedule 1 [8] makes it clear that an application for a community clean up order may be made:

- (a) before or at the time the court concerned imposes a 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 State Debt Recovery Office for the making of a court fine enforcement order under the *Fines Act 1996*.

Schedule 1 [9] makes provision regarding the maximum number of hours of community clean up work that is to be carried out under a community clean up order. Specifically, 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).

Schedule 1 [10] makes it clear that regulations under the Principal Act may deal with applications for community clean up orders.

Schedule 1 [13] provides that a further review of the Principal Act 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*).

Schedule 1 [14] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Passenger Transport Regulation 2007

Schedule 2 makes a consequential amendment to the *Passenger Transport Regulation 2007*.



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New South Wales

Graffiti Control Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Graffiti Control Act 2008* to make further provision with respect to the minimisation and control of graffiti; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Graffiti Control Amendment Act 2013*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Graffiti Control Act 2008 No 100	1
[1] Section 4		2
	Omit the section. Insert instead:	3
	4 Marking premises or property	4
	(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:	5 6 7
	(a) in relation to premises that are occupied—the occupier or person in charge of the premises,	8 9
	(b) in relation to premises that are unoccupied or other property—the owner or person in charge of the premises or property.	10 11
	Maximum penalty: 4 penalty units.	12
	(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.	13 14
	Maximum penalty: 20 penalty units or imprisonment for 12 months.	15
	(3) For the purposes of this section, a person commits an offence in <i>circumstances of aggravation</i> if the person intentionally marks the premises or other property:	16 17 18
	(a) by means of any graffiti implement, or	19
	(b) in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.	20 21
	(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 <i>Summary Offences Act 1988</i> 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.	22 23 24 25 26 27
[2] Section 5 Possession of graffiti implement		28
	Omit “damage or deface premises or other property” from section 5 (1).	29
	Insert instead “commit an offence under section 4 (2)”.	30
[3] Section 5 (2)		31
	Omit “section 4 (or under the corresponding provisions”.	32
	Insert instead “section 4 (2) (or under section 10A or 10B”.	33
[4] Section 6		34
	Omit the section. Insert instead:	35
	6 Posting bills	36
	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:	37 38 39
	(a) if the premises are occupied—the occupier or person in charge of the premises,	40 41

(b) if the premises are unoccupied—the owner or person in charge of the premises.	1 2
Maximum penalty: 4 penalty units.	3
[5] Section 8B Possession of spray paint cans by persons under 18	4
Omit “section 4 or 5 (or under a repealed provision of the <i>Summary Offences Act 1988</i> that corresponded to section 4 or 5)” from section 8B (5).	5 6
Insert instead “section 4 (2) or 5 (or under section 10A or 10B of the <i>Summary Offences Act 1988</i> as in force before their repeal by this Act)”.	7 8
[6] Section 8B (5), note	9
Omit the note.	10
[7] Section 9B Making of order for community clean up work	11
Insert after section 9B (1):	12
(1A) A community clean up order may be made:	13
(a) on the application of the prosecutor or the offender, or	14
(b) on the court’s own motion.	15
[8] Section 9B (5)	16
Insert after section 9B (4):	17
(5) For the avoidance of doubt, an application for a community clean up order may be made:	18 19
(a) before or at the time the court imposes the fine for the graffiti offence, or	20
(b) at any other time after the fine has been imposed but before the fine has been fully paid or referred to the State Debt Recovery Office for the making of a court fine enforcement order under the <i>Fines Act 1996</i> .	21 22 23
[9] Section 9G Number of hours of community clean up work	24
Insert after section 9G (2):	25
(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.	26 27 28 29
(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.	30 31 32 33 34
[10] Section 9R Regulations	35
Insert “(including applications for community clean up orders)” after “orders” in section 9R (1).	36 37
[11] Section 13B Alternative and additional actions to imposing penalty for graffiti offences under sections 4 (2) and 5	38 39
Omit “section 4 (Damaging or defacing property by means of graffiti implement) or 5 (Possession of graffiti implement)” from section 13B (1).	40 41
Insert instead “section 4 (2) or 5”.	42

[12] Section 13B (2)	1
Omit “section 4”. Insert instead “section 4 (2)”.	2
[13] Section 23 Review of Act	3
Omit section 23 (2) and (3). Insert instead:	4
(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 <i>Graffiti Legislation Amendment Act 2012</i>).	5 6 7
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after that date.	8 9
[14] Schedule 1 Savings, transitional and other provisions	10
Omit clause 1 (1). Insert instead:	11
(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.	12 13

Schedule 2	Amendment of Passenger Transport Regulation	1
	2007	2
Clause 61	Vandalism	3
	Omit “affix any poster to, or destroy or damage,”. Insert instead “destroy or damage”.	4