

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

GRAFFITI CONTROL ACT 2001

No. 46 of 2001

[Assented to 11 October 2001]

An Act to introduce measures for the minimisation of graffiti; to punish people responsible for graffiti; to provide for the removal of graffiti; to make consequential amendments to the Summary Offences Act 1953; and for other purposes.

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SCHEDULE *Consequential Amendments to Summary Offences Act 1953*

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Graffiti Control Act 2001*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"authorised person" means a person appointed by a council in accordance with section 7 or a police officer;

"carry" includes to have about one's person;

"council" means a council within the meaning of the *Local Government Act 1999*;

"graffiti implement" includes any implement capable of being used to mark graffiti;

"mark graffiti" includes deface property in any way;

"minor" means a person under the age of 18 years;

"private property" means property other than property of the Crown or an agency or instrumentality of the Crown;

"property" includes a building, structure, road, paved surface or object of any kind;

"public place" means a place (including a place on private land) to which the public has access;

"sell" includes offer for sale.

PART 2
SALE OF SPRAY PAINT

Cans of spray paint to be secured

4. (1) A person selling cans of spray paint from premises by retail must ensure that any such cans stored in a part of the premises to which members of the public are permitted access are kept—

- (a) in a securely locked cabinet; or
- (b) in a manner prescribed by regulation,

such that members of the public are not able to gain access to the cans without the assistance of the person or an agent or employee of the person.

Maximum penalty: \$1 250.
Expiation fee: \$160.

(2) However, subsection (1) does not apply in relation to the sale of cans of spray paint of a type prescribed by regulation.

Sale of cans of spray paint to minors

5. (1) A person must not sell a can of spray paint to a minor.

Maximum penalty: \$1 250.

(2) It is a defence to a charge of an offence against subsection (1) to prove that—

- (a) the defendant, or a person acting on behalf of the defendant, required the minor to produce evidence of age; and
- (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
- (c) in consequence the defendant reasonably assumed that, at the time of the sale, the minor was of or over the age of 18 years.

Notice to be displayed

6. (1) A notice containing the following words must be displayed in a prominent position in premises from which cans of spray paint are sold:

IT IS UNLAWFUL TO SELL CANS OF SPRAY PAINT TO PERSONS UNDER 18.
PERSONS MAY BE REQUIRED TO PRODUCE EVIDENCE OF AGE WHEN
PURCHASING CANS OF SPRAY PAINT.

(2) The words required to be displayed on a notice under subsection (1) must appear on the notice in legible letters or numerals not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice.

(3) A person selling cans of spray paint from premises must ensure that the requirements of this section are complied with.

Maximum penalty: \$750.

Expiation fee: \$105.

Appointment and powers of authorised persons

7. (1) A council may appoint a person under section 260 of the *Local Government Act 1999* as an authorised person for the purposes of the enforcement of this Part or provisions of this Part specified in the instrument of appointment.

(2) Subject to any conditions specified in the instrument of appointment, an authorised person may, as reasonably required for the purposes of enforcing a provision of this Part that the person is authorised to enforce, enter and remain in any premises from which the authorised person reasonably believes cans of spray paint are being or have been sold.

(3) An authorised person who enters premises under this section may—

- (a) investigate whether the provisions of this Part that the person is authorised to enforce are being or have been complied with;
- (b) take photographs or make films or other recordings in the place.

(4) An authorised person may only exercise powers under this section in relation to premises during the usual business hours of the premises.

(5) An authorised person must, on demand by a person affected by an exercise or proposed exercise of a power under this section, produce, for inspection by that person, the identity card issued to the authorised person under the *Local Government Act 1999*.

(6) A person must not—

- (a) without reasonable excuse, hinder or obstruct an authorised person in the exercise of powers under this section; or
- (b) use abusive, threatening or insulting language to an authorised person.

Maximum penalty: \$5 000.

(7) An authorised person must not—

- (a) address offensive language to any other person; or
- (b) without lawful authority, hinder or obstruct or use or threaten to use force in relation to any other person.

Maximum penalty: \$5 000.

PART 3
GRAFFITI OFFENCES

Application of Part

8. This Part does not apply to the marking of graffiti with lawful authority.

Marking graffiti

9. (1) A person who marks graffiti is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

(2) A person who aids, abets, counsels or procures the commission of an offence against subsection (1) is liable to be prosecuted and punished as a principal offender.

(3) A court finding a person guilty of an offence against this section must—

- (a) if the court is satisfied that it will be reasonably practicable for the person to take action, under the supervision of an appropriate authority, to remove or obliterate the graffiti—order that the person take that action and, in doing so, comply with all reasonable directions of the appropriate authority; or
- (b) in any other case—order that the person pay to the owner or occupier of the property in relation to which the offence was committed such compensation as the court thinks fit.

(4) An order under subsection (3)(a) may be enforced as if it were an order requiring the performance of community service (and in any enforcement proceedings the court may exercise any power that it could exercise in relation to an order requiring the performance of community service).

(5) In this section—

"appropriate authority" means a State or local government authority.

Carrying graffiti implement

10. (1) A person who—

- (a) carries a graffiti implement with the intention of using it to mark graffiti; or
- (b) carries a graffiti implement of a prescribed class without lawful excuse in a public place or a place on which the person is trespassing or has entered without invitation,

is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

(2) For the purposes of this section the following classes of graffiti implement are prescribed:

- (a) graffiti implements capable of spraying paint or a similar substance;
- (b) graffiti implements designed or modified to produce a mark that—
 - (i) is not readily removable by wiping or by use of water or detergent; and

- (ii) is more than 15 millimetres wide.

Proof of lawful authority or excuse

11. Where this Part provides that an act done without lawful authority or lawful excuse constitutes an offence, the onus, in proceedings for such an offence, lies on the defendant to prove lawful authority or lawful excuse.

PART 4
COUNCIL POWERS IN RELATION TO GRAFFITI

Council may remove or obliterate graffiti

12. (1) A council may enter private property and take any action necessary to remove or obliterate graffiti on the property that is visible from a public place if—

- (a)* a notice under this section was served on the owner or occupier of the property at least ten days prior to the action being taken; and
- (b)* the owner or occupier on whom the notice was served has not objected, in accordance with the notice, to the action being taken.

(2) A notice served on an owner or occupier under this section must—

- (a)* be in writing; and
- (b)* give particulars of the action proposed to be taken by the council; and
- (c)* specify the day on which the council proposes to take the action; and
- (d)* advise the owner or occupier that—
 - (i)* the owner or occupier may, prior to the specified day, object to the proposed action by notifying the council, or a specified agent of the council, in a manner specified in the notice; and
 - (ii)* if such an objection is made, the council will not take the proposed action.

(3) In taking action to remove or obliterate graffiti under this section, a council must—

- (a)* take reasonable steps to consult with the owner or occupier of the property in relation to the manner in which the action is to be taken; and
- (b)* ensure, as far as is practicable, that the work is carried out—
 - (i)* expeditiously and in such a way as to avoid unnecessary inconvenience or disruption to the owner or occupier of the property; and
 - (ii)* with reasonable care and to a reasonable standard.

(4) Action to be taken by a council under this section may be taken on the council's behalf by an employee of the council or by another person authorised by the council for the purpose.

(5) No civil liability attaches to a council, an employee of a council, or a person acting under the authority of a council, for anything done by the council, employee, or person under this section.

(6) Nothing in this section imposes a duty on a council to remove or obliterate graffiti.

(7) This section—

- (a) does not derogate from a council's powers under Chapter 12 Part 2 of the *Local Government Act 1999* or any other power of a council under that Act; and
- (b) is not to be taken to prevent or discourage a council from entering into agreements for the removal or obliteration of graffiti (whether for a fee or otherwise).

PART 5
MISCELLANEOUS

Regulations

13. (1) The Governor may make regulations that are contemplated by, or are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) require persons selling graffiti implements or specified classes of graffiti implements to comply with a code of conduct or practice;
- (b) impose a penalty (not exceeding a fine of \$1 250) for contravention of, or non-compliance with, a regulation.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.

(4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

(5) If a code is referred to in the regulations—

- (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
- (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

Consequential amendments to Summary Offences Act 1953

14. The *Summary Offences Act 1953* is amended as set out in the Schedule.

SCHEDULE*Consequential Amendments to Summary Offences Act 1953***Amendment of s. 48—Posting Bills****1. Section 48 of the *Summary Offences Act 1953* is amended—**

(a) by striking out subsection (1) and substituting the following subsection:

(1) A person who, without lawful authority, posts a bill on property is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.;

(b) by striking out subsection (4);

(c) by striking out from subsection (5) the definitions of "carry", "graffiti implement" and "mark graffiti".