

Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill

Government Bill

As reported from the Law and Order
Committee

Commentary

Recommendation

The Law and Order Committee has examined the Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Summary Offences Act 1981. It creates a specific offence for graffiti vandalism, makes it illegal to sell spraycans to people under 18 years of age, and compels shops that sell spraycans to restrict access to them. We do not expect this bill alone to solve the problem of tagging and graffiti, and consider that this legislation would be successful if it were used in conjunction with strategic and operational responses from a variety of agencies. We do not consider that any of the recommended new clauses in this bill would prevent the prosecution of graffiti vandals under other provisions of the Summary Offences Act or under any other legislation.

This commentary focuses on recommendations for significant changes, and does not cover minor changes of a technical nature.

Charges

We recommend the amendment of new clause 4 to ensure that the availability of charges under the proposed offence of graffiti vandalism would not limit or diminish the Police's ability to charge offenders under other provisions of the Summary Offences Act or other legislation for more serious damage by tagging and graffiti. This bill amends section 33 (bill sticking and defacing) of the Summary Offences Act and establishes a new graffiti vandalism offence. At present, in addition to section 33, an offender can be charged under section 11 (wilful damage) of the Summary Offences Act and section 269 (intentional damage) of the Crimes Act 1961. The penalties for these offences are stronger than those proposed in this bill. We consider the provisions in this bill address minor offending, leaving persistent offending and serious offending to be dealt with by other provisions in legislation.

Possession of graffiti implements

As introduced this bill does not include any offences for the possession of implements that could be used for creating graffiti. We consider that including possession as an offence would provide police with another tool for preventing this type of vandalism.

In clause 4, we propose the insertion of a new section 11B which would make it an offence to possess implements that could be used for graffiti vandalism. If a person did not have a reasonable excuse for having these implements and if it could be inferred that the intention was to illegally inscribe graffiti, it would be possible to charge him or her with a possessory offence. We also recommend that judges have discretion as to whether the offender should pay a fine of up to \$500 or complete a community work sentence or both.

Supply of graffiti implements

We considered recommending that a new section be included to deal with the supply of graffiti implements. Some submitters were concerned that a person over 18 years old may irresponsibly supply a

person under 18 with spraycans or other means to commit graffiti vandalism. However, we did not want to criminalise unintentionally people supplying spraycans to people who then used them for legal purposes. We are satisfied that a person could be charged as a party to defacing or wilful damage if they supplied graffiti implements under the Summary Offences Act 1981 in certain circumstances.

Restricted access to spraycans in shops

We understand that clause 6 of the bill, which inserts new section 14B into the Act to control the way spraycans are stored in shops, has caused some confusion. As introduced, the bill provides that spraycans must be “secured”, which has been interpreted by some as a requirement that spraycans be kept in locked cabinets in shops. To avoid this interpretation we recommend an amendment to indicate that access to spraycans in shops should be restricted. We consider this amendment will be sufficient to make it clear that the occupier of a shop would be required to keep spraycans where the public could not access them without help from a staff member.

New Zealand National remains concerned about the practicalities of the implementation of this new section.

Enforcement

The bill as drafted does not assign the enforcement of retailers’ compliance with the bill to any particular agency. Whilst we realise this is consistent with the rest of the Summary Offences Act, we are concerned that this could mean that no agency would take responsibility for enforcement. We expect that the Police and territorial local authorities will undertake different but complementary roles to enforce these provisions. We anticipate that territorial local authorities would do most of the checking of retailers for compliance. We expect that the Police would be involved in enforcement if particular retailers repeatedly offended. We consider it very important that both the Police and territorial local authorities should work together and take responsibility for ensuring that retailers comply with the bill.

Appendix

Committee process

The Summary Offences (Tagging and Graffiti Vandalism) Amendment Bill was referred to the committee on 21 February 2008. The closing date for submissions was 11 March 2008. We received and considered 29 submissions from interested groups and individuals. We heard 15 submissions, which included holding hearings in Auckland.

We received advice from the Ministry of Justice and the New Zealand Police.

Committee membership

Ron Mark (Deputy Chairperson until 5 March 2008, Chairperson from 5 March 2008)

Hon David Benson-Pope (Deputy Chairperson from 5 March 2008)

Chester Borrows

Martin Gallagher (Chairperson until 4 March 2008)

Hon Darren Hughes

Simon Power

Kate Wilkinson

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Annette King

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Summary Offences (Tagging and Graffiti Vandalism) Amendment Act **2008**.
- 2 Commencement** 5
(1) **Section 6** comes into force on the day 3 months after the date on which this Act receives the Royal assent.
(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended** 10
This Act amends the Summary Offences Act 1981.

**Part 1
Graffiti vandalism**

- 4 New ~~section 11A~~ sections 11A and 11B inserted** 15
(1) The following ~~section is~~ sections are inserted after section 11: 15
- “11A Graffiti vandalism, tagging, defacing, etc**
Every A person is liable to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002) or a fine not exceeding \$2,000, or to both, ~~who writes, draws, paints, sprays, or etches on, or otherwise marks, if~~ 20
he or she damages or defaces any building, structure, road, tree, property, or other thing by writing, drawing, painting, spraying, or etching on it, or otherwise marking it,—
“(a) without lawful authority; and
“(b) without the consent of the occupier or owner or other 25
person in lawful control.
- “11B Possession of graffiti implements**
A person is liable to a sentence of community work or a fine not exceeding \$500, or to both, if without reasonable excuse he or she has in his or her possession a thing capable of being used 30
to commit an offence against **section 11A** in circumstances in which it can reasonably be inferred that he or she intends to use it to commit such an offence.”

- (2) Section 33 is consequentially amended by—
- (a) omitting “, **defacing, etc.**” from the heading; and
 - (b) repealing paragraph (b).

Part 2 Spraycans

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5 New heading and section 14A inserted

- (1) The following heading and section are inserted after section 14:

Spraycans

“14A Sale of spraycans to people under 18 prohibited 10

- “~~(1) Every A person commits an offence who sells a spraycan to a person under the age of 18 years is liable to a fine not exceeding \$1,500.~~
- “~~(2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500.~~ 15
- “(3) In any proceedings for an offence against **subsection (1)** in respect of selling a spraycan to a person (the **buyer**), it is a defence if the defendant proves that—
- “(a) the defendant is—
 - “(i) a Board (within the meaning of section 2(1) of the 20
Education Act 1989), or an employee of a Board;
or
 - “(ii) the governing body of a tertiary education
provider (within the meaning of section 159(1)
of the Education Act 1989), or an employee of a 25
tertiary education provider; and
 - “(b) when the spraycan was sold, the buyer was enrolled at a school or institution managed by the Board or tertiary education provider; and
 - “(c) the spraycan was sold to the buyer to enable him or her 30
to undertake the work of his or her course at the school or institution, or to complete an assignment or project for the school or institution.
- “(4) In any proceedings for an offence against **subsection (1)** in respect of selling a spraycan to a person (the **buyer**), it is a 35
defence if the defendant proves that,—

- “(a) before or at the time of the sale of the spraycan, there was produced to the defendant a document purporting to be an evidence of age document; and
- “(b) the defendant believed on reasonable grounds that the document— 5
- “(i) was in fact an evidence of age document; and
- “(ii) related to the buyer; and
- “(iii) indicated that the buyer was of or over the age of 18 years.
- “(5) For the purposes of **subsection (4), evidence of age document** means a document that— 10
- “(a) contains—
- “(i) a photograph of the person to whom it is issued; and
- “(ii) information enabling the person’s age to be determined; and 15
- “(b) is—
- “(i) a New Zealand passport; or
- “(ii) an overseas passport; or
- “(iii) a driver licence issued under the Land Transport Act 1998; or 20
- “(iv) a document of the kind described in section 2A(2)(d) of the Sale of Liquor Act 1989.”
- (2) Section 2(1) is amended by inserting the following definition after the definition of **serious drug offence**: 25
- “**spraycan** means a container (made of any material or materials) that—
- “(a) contains paint, dye, ink, or some other pigment; and
- “(b) is so designed that the pigment it contains can be propelled from it (whether by a compressed or liquefied gas, or by mechanical means)”. 30
- 6 New section 14B inserted**
- (1) The following section is inserted after **section 14A** (as inserted by **section 65**):
- “**14B Spraycans**Access to spraycans in shops to be secured restricted 35
- “(1) This subsection applies to a spraycan if—

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- “(a) it is kept for sale in a part of a shop to which members of the public have access; and
- “(b) it is not—
- “(i) under the physical control of the occupier of the shop, or an agent or employee of the occupier; or 5
- “(ii) under the physical control of a potential buyer who is being directly supervised by the occupier of the shop, or an agent or employee of the occupier; and
- “(c) the shop is open to the public. 10
- “(2) The occupier of a shop must ensure that every spraycan in the shop to which **subsection (1)** applies is kept secured so stored in such a way that members of the public cannot obtain possession of it without the help of the occupier, or an agent or employee of the occupier. 15
- “(3) The occupier of a shop who fails or refuses to comply with **subsection (2)** ~~commits an offence, and is liable on summary conviction to a fine not exceeding \$1,500.~~”
- (2) Section 2(1) is amended by inserting the following definition after the definition of **serious drug offence**: 20
- “**shop** means a building, place, or part of a building or place, where goods are sold by retail, or kept or offered for sale by retail; and—
- “(a) includes—
- “(i) an auction mart; and 25
- “(ii) a barrow, stall, or other subdivision of a market; but
- “(b) does not include a building, place, or part of a building or place, where the only business carried on is that of selling goods to people who are dealers, and buy the goods to sell them again”. 30
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Legislative history

15 February 2008
21 February 2008

Introduction (Bill 199-1)
First reading and referral to Law and Order
Committee

