

**LEGISLATIVE COUNCIL**

**SECOND READING SPEECH**

**GRAFFITI VANDALISM BILL 2015**

**HON. MICHAEL MISCHIN, MLC**  
**ATTORNEY GENERAL**  
**REPRESENTING THE MINISTER**  
**FOR POLICE**

Graffiti vandalism is a scourge on our buildings, public places and communities. The wanton damage caused by graffiti vandals has resulted in considerable costs to the State and the community. This Government did not ignore the problem and we delivered on our 2008 election commitment to re-establish the State Graffiti Taskforce that was scrapped by the previous Labor government.

In 2010 the taskforce developed the Tough-on-Graffiti-Strategy 2011-2015 which provided the guiding principles of a new way forward in the delivery of graffiti vandalism reduction initiatives. Since the reestablishment of the taskforce and its guiding strategy, a targeted approach to catching these criminals has seen a decline in graffiti damage and has gone some way to reducing the problem.

Despite this, the cost of repairing the unwanted damage caused by graffiti vandals in recent years has been estimated to still be around eight million dollars per year.

With a view to further reduce the incidence of this mindless damage, the Liberal-National Government, in the lead up to the 2013 election, committed to better arm our law enforcement officers and other government bodies to deal with the problems associated with graffiti.

To this end the Graffiti Vandalism Bill 2015 creates new offences and penalties for graffiti damage and consolidates the other graffiti related offences and powers currently spread across a number of Western Australian statutes, into one stand-alone Act.

Specifically, this Bill creates a new, stand-alone offence of damaging property by graffiti. This offence has a maximum penalty of a twenty four thousand dollar fine and two years imprisonment. Illustrating the Government's commitment to getting tough on graffiti vandals, the Bill provides that the minimum penalty the Court must impose on an offender convicted of the new graffiti damage offence is a community based order, or if a juvenile, a youth community based order. An element of the community based order or youth community based order must be a minimum of ten hours of community work. The community work is to, where practicable, involve graffiti removal work.

The Bill also replicates and expands on the existing criminal provisions relating to graffiti, including offences of possessing things with the intent to apply graffiti, selling graffiti implements to children, and recovering the costs of cleaning graffiti. These provisions are to be removed from the *Criminal Code* and replicated in the Bill; this will create a consolidated piece of legislation tackling graffiti vandalism.

To further tackle the spread of graffiti vandalism, the Bill provides for the forfeiture of anything used to store, record or transmit images of the graffiti caused, upon application by the prosecutor and on conviction of the offender for a graffiti offence. Graffiti vandals often photograph their work, or video record its creation. These images are then shared among social groups and via the internet, supporting the proliferation of a graffiti culture. By hindering offenders in the distribution of their work, it is anticipated the incentive to commit graffiti vandalism, is reduced.

In order to support the removal of graffiti through specific clean-up programs, the Bill creates an immunity from action in tort:

- against an individual for damage caused by graffiti removal that is done in good faith and does not constitute negligent behaviour and clarifies that this immunity does not extend to the State; and
- against the owner of a property who has a duty of care to an individual who enters their property for death or injury suffered by an individual involved in graffiti removal unless the breach of duty amounts to gross negligence and clarifies that in such instance action can instead be taken against the State.

These important provisions will protect persons who allow their assets to be used in graffiti removal programs, and will provide civil liability coverage to those involved in the removal of graffiti.

To support the creation of a one-stop-shop piece of legislation for graffiti, the Bill includes the existing graffiti removal powers and protections, as provided to local government by the *Local Government Act 1995*. These powers are removed from the *Local Government Act 1995* and replicated in the Bill as necessary.

Lastly, the Bill makes important amendments to the *Public Transport Authority Act 1995*. The first amendment expands the existing powers of arrest of Public Transport Authority security officers to including apprehending persons reasonably suspected of committing certain offences on Public Transport Authority property. Currently, a Public Transport Authority security officer may only apprehend a person committing an offence on Public Transport Authority property if it appears to the officer that the offence is likely to continue or be repeated. The amendment made by this Bill will allow a security officer to apprehend a person reasonably suspected of committing the offence, including the new graffiti offence, without the need for the offence to continue or be repeated.

Additionally, the Bill adds the new damaging property by graffiti and the existing *Criminal Code* offence of damaging property to the list of prescribed offences for which, if committed on Public Transport Authority property, the Chief Executive Officer of the Public Transport Authority may seek to prohibit a person from using public transport authority services for a finite period of time.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table an Explanatory Memorandum.