

## CRIMINAL CODE AMENDMENT (GRAFFITI) BILL 2009 (WA)

### EXPLANATORY MEMORANDUM

#### Overview of the Bill

The Criminal Code Amendment (Graffiti) Bill 2009 (WA) (the Bill) amends the *Criminal Code* (WA) (the Code) in relation to graffiti offences.

The Bill does four things:

- It defines a *graffiti implement*.
- It creates a new criminal offence and penalty for a person to sell a graffiti implement to a child.
- It creates a defence which may be relied upon where the accused believed on reasonable grounds that the purchaser of the graffiti implement was not a child.
- It doubles the existing penalty in section 445 of the Code to a maximum of 2 years imprisonment and a fine of \$24,000.

The proposed new offence is consistent with the legislation in other jurisdictions which contains offences for persons who sell spray paint to minors.

#### Clause 1 – Short title

Clause 1 provides that the title of the proposed Act is the *Criminal Code Amendment (Graffiti) Act 2009*.

#### Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Royal Assent. The balance of the Act will commence on a day fixed by proclamation, and different days may be fixed for different provisions.

#### Clause 3 – The *Criminal Code* amended

Clause 3 provides that the proposed Act amends the *Criminal Code* (WA) (the Code).

#### Clause 4 – Chapter XXIV inserted

Clause 4 proposes to insert a new “Chapter XXIV” into the Code. This new Chapter contains proposed new section 216.

#### Section 216(1) – Selling graffiti implements to children

Proposed section 216(1) defines what is meant by a *graffiti implement*. This refers to spray paint; a pen or marker pen, that has a tip over 6mm wide, the contents of which are insoluble in water and can mark a surface.

Proposed section 216(2) creates a new criminal offence for a person to sell a graffiti implement to a child. The penalty for a first offence will be a fine of \$6,000 and for a subsequent offence \$12,000.

Proposed section 216(3) provides a defence if the accused, or person acting on behalf of the accused, proves that they believed on reasonable grounds that the purchaser was not a child.

**Clause 5 – Section 445 amended**

Existing section 445 of the Code makes it an offence for a person to unlawfully damage or destroy the property of another person without that person's consent. The maximum penalty is imprisonment for 12 months and a fine of \$12,000.

Clause 5 proposes to amend section 445 by increasing the maximum term of imprisonment to 2 years and increasing the fine to \$24,000.