

Criminal Code Amendment (Sale of Spray Paint Cans) Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Mr Sprigg, MLA)

**Criminal Code Amendment (Sale of Spray
Paint Cans) Bill 2007**

A Bill for

An Act to amend *The Criminal Code 1913*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Code Amendment (Sale of Spray Paint Cans) Act 2007*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

Part 2 — Amendments to *The Criminal Code*

3. The Act amended

The amendments in this Part are to *The Criminal Code**.

5 [* Reprint 12 as at 1 June 2005 (see the Schedule to the
 Criminal Code Act 1913 appearing as Appendix B to the
 Criminal Code Compilation Act 1913].

4. Section 1 amended

10 Section 1 is amended by inserting after the definition of
 “ship” —

 “
 The term “**spray paint can**” means a spray can that contains
 spray paint;

 ”.

15 **5. Sections 447 and 448 inserted**

 After section 446 the following sections are inserted —

 “

447. Sale of spray paint cans to a child

- 20 (1) A person who sells a spray paint can to a child is guilty
 of an offence and is liable to a fine of \$1,100.
- (2) It is a defence (proof of which lies on the person selling
 the spray paint can) to a prosecution for an offence
 under this section that the person selling the spray paint
 can believed on reasonable grounds that the person to
25 whom the spray paint can was sold was not a child.
- (3) If an employee contravenes subsection (1), the
 employer is taken to have contravened that subsection,
 whether or not the employee contravened the provision
 without the employer’s authority or contrary to the
30 employer’s orders or instructions.

s. 5

- (4) It is a defence to a prosecution against an employer for such a contravention if it is proved —
- (a) that the employer had no knowledge of the contravention; and
 - 5 (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (5) An employer may be proceeded against and convicted under subsection (1) by virtue of subsection (3) whether or not the employee has been proceeded against or convicted under subsection (1).
- 10

448. Unsecured display by retailers of spray paint cans

- (1) An occupier of any shop from which spray paint cans are sold who —
- 15 (a) displays any such can in any part of the shop to which members of the public are permitted access; and
 - (b) fails to properly secure the can in accordance with subsection (2),
- 20 is guilty of an offence and is liable to a fine of \$1,100.
- (2) A spray can is properly secured if it is displayed —
- (a) in a locked cabinet with restricted key access; or
 - (b) on a shelf of a height of 2.1 metres or more; or
 - 25 (c) within or behind a counter in such a manner that members of the public are not able to gain access to the can without the assistance of the occupier or an employee or agent of the occupier.
- 30

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