

EXPLANATORY MEMORANDUM

Criminal Code Amendment (Sale of Spray Paint Cans) Bill 2007 (E248)

(Introduced by Mr Sprigg, MLA)

OVERVIEW

To introduce legislation that makes it an offence for retailers to sell spray paint cans to minors under the age of 18 years.

Clause 1 Cites the Bill's short title as the *Criminal Code Amendment (Sale of Spray Paint Cans) Act 2007*.

Clause 2 Provides for commencement on Royal Assent.

Clause 3 **The Act amended**

This clause provides that the amendments in this Act are to *The Criminal Code*.

Clause 4 **Section 1 amended**

This clause amends Section 1 by inserting after the definition of "ship"—

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

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Clause 5 **Inserts sections 447 and 448**

This clause inserts the following sections after section 446

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447. Sale of spray paint cans to a child

- (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 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 employer's orders or instructions.
- (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

(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).

448. Unsecured display by retailers of spray paint cans

(1) An occupier of any shop from which spray paint cans are sold who—

(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),

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

(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.

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