

South Australia

**Graffiti Control (Orders on Conviction)
Amendment Bill 2007**

A BILL FOR

An Act to amend the *Graffiti Control Act 2001* and to make related amendments to the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Graffiti Control (Orders on Conviction) Amendment Act 2007*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Graffiti Control Act 2001*

3—Amendment of section 9—Marking graffiti

- 10 (1) Section 9(3)—delete subsection (3) and substitute:

- (3) Where a court finds a person guilty of an offence against this section—

- (a) the court must order that the person pay to the owner or occupier of the property in relation to which the offence was committed such compensation as the court thinks fit; and
- 15 (b) if the court is satisfied that a suitable program exists for the removal or obliteration, under the supervision of an appropriate authority, of graffiti on any property and that it will be reasonably practicable for the person to participate in that program—
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(i) in the case of a first offence—the court may order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority); or

(ii) in the case of a subsequent offence—the court must order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority).

(2) Section 9(4)—delete "subsection (3)(a)" and substitute:

subsection (3)(b)

(3) Section 9—after subsection (4) insert:

(4a) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous offence against this section or against section 85 of the *Criminal Law Consolidation Act 1935* for which the defendant has been convicted will be taken into account.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

2—Insertion of section 85AA

After section 85 insert:

85AA—Special provisions relating to graffiti

(1) If a person is dealt with by a court for an offence under section 85 and the conduct alleged to constitute the offence consists of, or includes, the marking of graffiti, the following provisions apply:

(a) the court must, for statistical purposes, record the fact that the conduct alleged consisted of, or included, the marking of graffiti;

(b) if the court finds the person guilty of the offence—

(i) the court must order that the person pay to the owner or occupier of the property in relation to which the offence was committed such compensation as the court thinks fit; and

(ii) if the court is satisfied that a suitable program exists for the removal or obliteration, under the supervision of an appropriate authority, of graffiti on any property and that it will be reasonably practicable for the person to participate in that program—

(A) in the case of a first offence—the court may order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority); or

(B) in the case of a subsequent offence—the court must order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority).

(2) An order under subsection (1)(b)(ii) may be enforced as if it were an order requiring the performance of community service (and in any enforcement proceedings the court may exercise any power that it could exercise in relation to an order requiring the performance of community service).

(3) In determining whether an offence is a first or subsequent offence for the purposes of this section, any previous offence against section 85 or against section 9 of the *Graffiti Control Act 2001* for which the defendant has been convicted will be taken into account.

(4) In this section—

appropriate authority means a State or local government authority.