

South Australia

Graffiti Control Act 2001

An Act to introduce measures for the minimisation of graffiti; to punish people responsible for graffiti; to provide for the removal of graffiti; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Graffiti Control Act 2001*.

3—Interpretation

In this Act—

authorised person means a person appointed by a council in accordance with section 7 or a police officer;

carry includes to have about one's person;

council means a council within the meaning of the *Local Government Act 1999*;

driver's licence means a licence under the *Motor Vehicles Act 1959* and includes a learner's permit;

graffiti implement means—

(a) a can of spray paint, other than a can containing paint that—

(i) does not contain a pigment; and

(ii) is transparent when sprayed onto a surface; or

(b) an implement of a kind prescribed by the regulations;

mark graffiti includes deface property in any way;

minor means a person under the age of 18 years;

private property means property other than property of the Crown or an agency or instrumentality of the Crown;

property includes a building, structure, road, paved surface or object of any kind;

public place means a place (including a place on private land) to which the public has access;

sell includes offer for sale.

3A—Extra-territorial operation

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

Part 2—Sale and supply of graffiti implements

4—Graffiti implements to be secured

(1) A person selling graffiti implements from premises by retail must ensure that any such implements stored in a part of the premises to which members of the public are permitted access are kept—

(a) in a securely locked cabinet; or

- (b) in a manner prescribed by regulation,

such that members of the public are not able to gain access to the implements without the assistance of the person or an agent or employee of the person.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) However, subsection (1) does not apply in relation to the sale of graffiti implements of a type prescribed by regulation.

5—Sale or supply of graffiti implements to minors

- (1) A person must not sell a graffiti implement to a minor.

Maximum penalty: \$5 000.

- (2) A person must not supply to a minor a graffiti implement of a class prescribed for the purposes of this subsection.

Maximum penalty: \$2 500.

- (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that—

- (a) the defendant, or a person acting on behalf of the defendant, required the minor to produce evidence of age; and
- (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
- (c) in consequence the defendant reasonably assumed that, at the time of the sale, the minor was of or over the age of 18 years.

- (4) It is a defence to a charge of an offence against subsection (2) to prove that the defendant believed on reasonable grounds that the minor intended to use the graffiti implement for a lawful purpose.

- (5) In this section—

lawful purpose means—

- (a) the lawful pursuit of an occupation, education or training; or
- (b) any artistic activity that does not constitute an offence against this or any other Act; or
- (c) any construction, renovation, restoration or maintenance activity that does not constitute an offence against this or any other Act; or
- (d) any other purpose prescribed by regulation.

6—Notice to be displayed

- (1) A notice that complies with the requirements prescribed by the regulations must be displayed in a prominent position in premises from which graffiti implements are sold.
- (3) A person selling graffiti implements from premises must ensure that the requirements of this section are complied with.

Maximum penalty: \$750.

Expiation fee: \$105.

6A—Advertising graffiti implements for sale

A person who advertises a graffiti implement for sale in a way that is likely to encourage or promote unlawful graffiti is guilty of an offence.

Maximum penalty: \$5 000.

7—Appointment and powers of authorised persons

- (1) A council may appoint a person under section 260 of the *Local Government Act 1999* as an authorised person for the purposes of the enforcement of this Part or provisions of this Part specified in the instrument of appointment.
- (2) Subject to any conditions specified in the instrument of appointment, an authorised person may, as reasonably required for the purposes of enforcing a provision of this Part that the person is authorised to enforce, enter and remain in any premises from which the authorised person reasonably believes graffiti implements are being or have been sold.
- (3) An authorised person who enters premises under this section may—
 - (a) investigate whether the provisions of this Part that the person is authorised to enforce are being or have been complied with;
 - (b) take photographs or make films or other recordings in the place.
- (4) An authorised person may only exercise powers under this section in relation to premises during the usual business hours of the premises.
- (5) An authorised person must, on demand by a person affected by an exercise or proposed exercise of a power under this section, produce, for inspection by that person—
 - (a) if the authorised person is a police officer not in uniform—his or her warrant card; and
 - (b) in any other case—the identity card issued to the authorised person under the *Local Government Act 1999*.
- (6) A person must not—
 - (a) without reasonable excuse, hinder or obstruct an authorised person in the exercise of powers under this section; or
 - (b) use abusive, threatening or insulting language to an authorised person.Maximum penalty: \$5 000.
- (7) An authorised person must not—
 - (a) address offensive language to any other person; or
 - (b) without lawful authority, hinder or obstruct or use or threaten to use force in relation to any other person.Maximum penalty: \$5 000.

Part 3—Graffiti offences

8—Application of Part

This Part does not apply to the marking of graffiti with lawful authority.

9—Marking graffiti

- (1) A person who marks graffiti is guilty of an offence.
Maximum penalty: \$5 000 or imprisonment for 12 months.
- (1a) A person who marks graffiti—
(a) within a cemetery; or
(b) on or within a public memorial; or
(c) on or within a place of public worship or religious practice,
is guilty of an offence.
Maximum penalty: \$7 500 or 18 months imprisonment.
- (2) A person who aids, abets, counsels or procures the commission of an offence against subsection (1) is liable to be prosecuted and punished as a principal offender.
- (3) A court finding a person guilty of a prescribed graffiti offence must—
(a) 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—order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority); or
(b) in any other case—order that the person pay such compensation as the court thinks fit to the owner or occupier of the property in relation to which the offence was committed.
- (3a) A court finding a person guilty of a prescribed graffiti offence may, in addition to making an order under subsection (3), in relation to an offence where the damage consists of—
(a) graffiti that is visible from a public place; or
(b) graffiti on public property,
order that the person pay to any person who has removed or obliterated the graffiti, or caused the graffiti to be removed or obliterated, a reasonable amount for the removal or obliteration.
- (4) An order under subsection (3)(a) 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).
- (5) In this section—
appropriate authority means a State or local government authority;
prescribed graffiti offence means—
(a) an offence against this section; or
(b) an offence against section 85 of the *Criminal Law Consolidation Act 1935* where the conduct constituting the offence consists of, or includes, the marking of graffiti;

public memorial means a statue, structure or other property which is situated in a public place in honour, or in the memory, of a person or class of persons (whether alive or deceased);

public property means property owned by, vested in, or under the control or management of—

- (a) the Crown, or an agent or instrumentality of the Crown; or
- (b) a body corporate established by an Act; or
- (c) a council within the meaning of the *Local Government Act 1999*.

10—Carrying graffiti implement

- (1) A person who—

- (a) carries an implement with the intention of using it to mark graffiti; or
- (b) carries a graffiti implement of a class prescribed for the purposes of this paragraph without lawful excuse in a public place or a place on which the person is trespassing or has entered without invitation,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 12 months.

10A—Court may make orders in relation to driver's licences

- (1) A court finding a person guilty of a prescribed graffiti offence that is not a first offence may, in addition to making any other order under this Part, order that the person be disqualified from holding or obtaining a driver's licence for a period (of whole months only) being not less than 1 month but not exceeding 6 months.
- (2) The disqualification prescribed by subsection (1) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence.
- (3) In determining whether an offence is a first offence for the purposes of subsection (1), any previous offence against—
 - (a) this Part; or
 - (b) section 85 of the *Criminal Law Consolidation Act 1935* where the conduct constituting the offence consists of, or includes, the marking of graffiti,

for which the defendant has been convicted will be taken into account whether or not the offence is committed before or after the commencement of this section.

- (4) In this section—

prescribed graffiti offence means—

- (a) any offence against this Part; or
- (b) an offence against section 85 of the *Criminal Law Consolidation Act 1935* where the conduct constituting the offence consists of, or includes, the marking of graffiti.

10B—Duty to produce driver's licence at court

- (1) A person who holds a driver's licence and is charged with a prescribed graffiti offence that is not a first offence, must, if so required by the court, a police officer or the Registrar, produce his or her driver's licence to the court at the time of the hearing of the charge.
Maximum penalty: \$1 250.
- (2) It is a defence to a charge under this section to prove that the defendant had a reasonable excuse for not producing the driver's licence.
- (3) In determining whether an offence is a first offence for the purposes of subsection (1), any previous offence against—
 - (a) this Part; or
 - (b) section 85 of the *Criminal Law Consolidation Act 1935* where the conduct constituting the offence consists of, or includes, the marking of graffiti, for which the defendant has been convicted will be taken into account whether or not the offence is committed before or after the commencement of this section.
- (4) In this section—
prescribed graffiti offence means—
 - (a) any offence against this Part; or
 - (b) an offence against section 85 of the *Criminal Law Consolidation Act 1935* where the conduct constituting the offence consists of, or includes, the marking of graffiti.

10C—Seizure of prescribed graffiti implement

- (1) A police officer may seize a graffiti implement of a class prescribed for the purposes of this section that is in the possession of a person in a public place, if the police officer suspects on reasonable grounds that the implement has been or may be used in contravention of this Act.
- (2) A graffiti implement may be seized from a person under this section whether or not the person has been or is to be charged with an offence under this Act.
- (3) The regulations may set out procedures relating to—
 - (a) the seizure of a graffiti implement; and
 - (b) the circumstances in which such a graffiti implement may be—
 - (i) returned to any person; or
 - (ii) forfeited to the Crown.

11—Proof of lawful authority or excuse

Where this Part provides that an act done without lawful authority or lawful excuse constitutes an offence, the onus, in proceedings for such an offence, lies on the defendant to prove lawful authority or lawful excuse.

Part 4—Council powers in relation to graffiti

12—Council may remove or obliterate graffiti

- (1) A council may enter private property and take any action necessary to remove or obliterate graffiti on the property that is visible from a public place if—
 - (a) a notice under this section was served on the owner or occupier of the property at least ten days prior to the action being taken; and
 - (b) the owner or occupier on whom the notice was served has not objected, in accordance with the notice, to the action being taken.
- (2) A notice served on an owner or occupier under this section must—
 - (a) be in writing; and
 - (b) give particulars of the action proposed to be taken by the council; and
 - (c) specify the day on which the council proposes to take the action; and
 - (d) advise the owner or occupier that—
 - (i) the owner or occupier may, prior to the specified day, object to the proposed action by notifying the council, or a specified agent of the council, in a manner specified in the notice; and
 - (ii) if such an objection is made, the council will not take the proposed action.
- (3) In taking action to remove or obliterate graffiti under this section, a council must—
 - (a) take reasonable steps to consult with the owner or occupier of the property in relation to the manner in which the action is to be taken; and
 - (b) ensure, as far as is practicable, that the work is carried out—
 - (i) expeditiously and in such a way as to avoid unnecessary inconvenience or disruption to the owner or occupier of the property; and
 - (ii) with reasonable care and to a reasonable standard.
- (4) Action to be taken by a council under this section may be taken on the council's behalf by an employee of the council or by another person authorised by the council for the purpose.
- (5) No civil liability attaches to a council, an employee of a council, or a person acting under the authority of a council, for anything done by the council, employee, or person under this section.
- (6) Nothing in this section imposes a duty on a council to remove or obliterate graffiti.
- (7) This section—
 - (a) does not derogate from a council's powers under Chapter 12 Part 2 of the *Local Government Act 1999* or any other power of a council under that Act; and

- (b) is not to be taken to prevent or discourage a council from entering into agreements for the removal or obliteration of graffiti (whether for a fee or otherwise).

Part 5—Miscellaneous

13—Regulations

- (1) The Governor may make regulations that are contemplated by, or are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) require persons selling graffiti implements or specified classes of graffiti implements to comply with a code of conduct or practice;
 - (b) impose a penalty (not exceeding a fine of \$1 250) for contravention of, or non-compliance with, a regulation.
- (3) Regulations under this Act—
 - (a) may be of general application or limited application;
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.
- (4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.
- (5) If a code is referred to in the regulations—
 - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
 - (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Graffiti Control Act 2001* amended the following:

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	46	<i>Graffiti Control Act 2001</i>	11.10.2001	1.2.2002 except s 4—1.4.2002 (<i>Gazette 15.1.2002 p184</i>)
2013	1	<i>Graffiti Control (Miscellaneous) Amendment Act 2013</i>	14.2.2013	3.8.2013 (<i>Gazette 4.7.2013 p2969</i>)
2013	11	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2013</i>	18.4.2013	Pt 7 (s 15)—3.8.2013 immediately after 1/2013 s 4 (<i>Gazette 6.6.2013 p2498</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
driver's licence	inserted by 1/2013 s 4(1)	3.8.2013
graffiti implement	substituted by 1/2013 s 4(2)	3.8.2013
s 3A	inserted by 1/2013 s 5	3.8.2013
Pt 2		
heading	substituted by 1/2013 s 6	3.8.2013
s 4		
s 4(1)	amended by 1/2013 s 7(1)—(4)	3.8.2013
s 4(2)	amended by 1/2013 s 7(5)	3.8.2013
s 5	substituted by 1/2013 s 8	3.8.2013
s 6		

s 6(1)	substituted by 1/2013 s 9(1)	3.8.2013
s 6(2)	<i>deleted by 1/2013 s 9(1)</i>	3.8.2013
s 6(3)	amended by 1/2013 s 9(2)	3.8.2013
s 6A	inserted by 1/2013 s 10	3.8.2013
s 7		
s 7(2)	amended by 11/2013 s 15(1)	3.8.2013
s 7(5)	substituted by 11/2013 s 15(2)	3.8.2013
Pt 3		
s 9		
s 9(1)	amended by 1/2013 s 11(1)	3.8.2013
s 9(1a)	inserted by 1/2013 s 11(2)	3.8.2013
s 9(3)	substituted by 1/2013 s 11(3)	3.8.2013
s 9(3a)	inserted by 1/2013 s 11(3)	3.8.2013
s 9(5)	prescribed graffiti offence inserted by 1/2013 s 11(4)	3.8.2013
public memorial	inserted by 1/2013 s 11(4)	3.8.2013
public property	inserted by 1/2013 s 11(4)	3.8.2013
s 10		
s 10(1)	amended by 1/2013 s 12(1)–(3)	3.8.2013
s 10(2)	<i>deleted by 1/2013 s 12(4)</i>	3.8.2013
ss 10A—10C	inserted by 1/2013 s 13	3.8.2013
Pt 5		
s 14	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	

Transitional etc provisions associated with Act or amendments

Graffiti Control (Miscellaneous) Amendment Act 2013

14—Review by Legislative Review Committee

As soon as practicable after the expiration of 3 years from the commencement of this Act, the Legislative Review Committee must inquire into, consider and report to the Parliament on the operation and impact of this Act, including the effectiveness of sections 10A and 10B of the *Graffiti Control Act 2001* (as enacted by this Act) in reducing offending for prescribed graffiti offences (within the meaning of those sections).