

Hutt City Council (Graffiti Removal) Bill

Local Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Hutt City Council (Graffiti Removal) Bill and recommends that it be passed with the amendments shown.

Introduction

The Hutt City Council (Graffiti Removal) Bill seeks to empower the Hutt City Council to remove from private property graffiti that is visible from a public place within the district of the Hutt City Council. The council considers graffiti to be an important issue, and it is thought to signal a lack of social cohesion and to reduce property values. Although the Summary Offences Act 1981 provides legal grounds to deter offenders and control graffiti sources and effects, it does not allow the council to clean graffiti from private properties.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Purpose

We recommend amending clause 3 to make it clear that the purpose of the bill is to allow the removal from private property of graffiti that is visible from a public place. As introduced, the clause would have a broader effect than the intended effect of the bill.

Interpretation

We recommend amending clause 5 to include a definition of graffiti. We believe that a definition is desirable for the sake of clarity, and recommend one consistent with section 11A of the Summary Offences Act 1981.

Council's power to remove graffiti

For the sake of clarity, we recommend amending clauses 6 and 7. These amendments would require the council to state on the graffiti removal notice the source of the power relied on; and would require people authorised by the council to take a copy of the notice served under clause 6(3) and to carry an adequate form of identification when removing graffiti.

Civil liability

We recommend deleting clause 8, which seeks to protect the council from civil proceedings arising out of actions done in good faith, even without reasonable care. The rationale for providing this protection is unclear, and we do not believe that council employees should be given such protection when other local authority employees are generally not.

Appendix

Committee process

The Hutt City Council (Graffiti Removal) Bill was referred to the committee on 29 February 2012. The closing date for submissions was 12 April 2012. We received and considered seven submissions from interested groups and individuals. We heard three submissions. We received advice from the Department of Internal Affairs.

Committee membership

Nicky Wagner (Chairperson)

Maggie Barry

Jacqui Dean

Paul Goldsmith

Gareth Hughes

Raymond Huo

Nikki Kaye

Hon Annette King

Moana Mackey

Eugenie Sage

Hon Dr Nick Smith

Andrew Williams

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Trevor Mallard

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Hutt City Council (Graffiti Removal) Act **2011**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

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3 Purpose

The purpose of this Act is to facilitate the removal of graffiti that is on private property and that is visible from a public place within the district of the Hutt City Council.

4 Application

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This Act applies to activities in the district of the Hutt City Council.

5 Interpretation

In this Act, unless the context otherwise requires,—

Council means the Hutt City Council

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district means the district of the Hutt City Council

graffiti means damage to, or defacement of, any building, structure, road, tree, property, or other thing by writing, drawing, painting, spraying, etching, or otherwise marking it—

(a) without lawful authority; and

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(b) without the consent of the occupier or the owner or any other person in lawful control

private land means land other than land belonging to the Crown or a local authority, or to an agency or instrument of the Crown or a local authority

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

public place has the meaning given to it by section 2 of the Summary Offences Act 1981

remove, in relation to graffiti, includes erasing or covering up the graffiti.

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Part 2

Council's power to remove graffiti

6 Council may remove graffiti

- (1) If **subsection (2)** applies, the Council may— 5
- (a) enter any private land; and
 - (b) take any action necessary to remove graffiti that is—
 - (i) on any property situated on that land; and
 - (ii) visible from a public place within the district of the Hutt City Council.
- (2) This subsection applies if— 10
- (a) a notice under this section was served on the ~~owner or occupier of the land~~ and the owner of the land (if the occupier is not also the owner) at least 10 working days prior to the action being taken; and
 - (b) the ~~owner or occupier~~ or owner on whom the notice was served has not objected, in accordance with the notice, to the action being taken. 15
- (3) A notice served on an ~~owner or occupier~~ or owner under this section must—
- (a) be in writing; and 20
 - (b) give particulars of the action proposed to be taken by the Council; and
 - (c) specify the ~~day~~ date on which the Council proposes to take the action; and
 - (ca) specify that the action is authorised under **section 6(1)**; and 25
 - (d) advise the ~~owner or occupier~~ or owner or both (as the case may be) that—
 - (i) the ~~owner or occupier~~ or owner may, prior to the specified ~~day~~ date, object to the proposed action 30 by notifying the ~~Council~~ Council, or a specified agent of the Council, in a manner specified in the notice; and
 - (ii) if an objection is made, the Council will not take the proposed action. 35
- (4) Nothing in this section imposes a duty on the Council to remove graffiti.

7 Requirements for Council when taking action to remove graffiti under this Act

(1) In taking action to remove graffiti under this Act, the Council must—

- (a) take reasonable steps to consult ~~with the owner or occupier of the land~~ and the owner of the land (if the occupier is not also the owner) in relation to the manner in which the action is to be taken; and 5
- (b) ensure, as far as practicable, that the work is carried out— 10
 - (i) expeditiously and in a way that avoids unnecessary inconvenience or disruption to the ~~owner or occupier of the land~~ occupier or owner; and
 - (ii) with reasonable care and to a reasonable standard. 15

(2) Action to be taken by the Council under this Act may be taken on the Council's behalf by an employee of the Council or by another person authorised by the Council for that purpose.

(3) Any employee or authorised person taking action on the Council's behalf must— 20

- (a) carry proof of identity; and
- (b) carry a copy of the notice specified under **section 6(3)**; and
- (c) show the proof of identity or the notice or both to the occupier or owner if requested by the occupier or owner. 25

8 Protection from civil liability

~~No civil proceedings may be brought against the Council, an employee of the Council, or a person acting under the authority of the Council for any act done or omitted to be done in good faith by the Council, employee, or person under this Act.~~ 30

9 Service of notices

(1) A notice or other document required to be served on a person for the purposes of this Act is taken to have been served if it is—

- (a) delivered personally to the person; or 35
- (b) delivered to the person at the person's usual or last known place of residence or business; or

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- (c) sent by ~~pre-paid~~ post addressed to the person at the person's usual or last known place of residence or business; or
 - (d) sent by fax or email to the person's fax number or email address; or 5
 - (e) posted to the person's post office box address; or
 - (f) left at a document exchange for direction to the person's document exchange box number.
- (2) If a notice or another document is to be served on a body (whether incorporated or not), service on an officer of the body, or on the registered office of the body, in accordance with **subsection (1)** is taken to be service on the body. 10
- (3) If a notice or another document is to be served on a partnership, service on any of the partners in accordance with **subsection (1)** is taken to be service on the partnership. 15
- (4) If a notice or other document is sent by post to a person in accordance with **subsection (1)(c) or (e)**, it is taken, in the absence of proof to the contrary, to have been received by the person at the time at which the letter would have been delivered in the ordinary course of post. 20

Legislative history

29 September 2011	Introduction (Bill 334-1)
29 February 2012	First reading and referral to Local Government and Environment Committee
