



Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008

Public Act 2008 No 43
Date of assent 25 June 2008
Commencement see section 2

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
Part 1		
Graffiti vandalism		
4	New sections 11A and 11B inserted	2
	11A Graffiti vandalism, tagging, defacing, etc	2
	11B Possession of graffiti implements	3
Part 2		
Spraycans		
5	New heading and section 14A inserted	3
	<i>Spraycans</i>	
	14A Sale of spraycans to people under 18 prohibited	3
6	New section 14B inserted	4
	14B Access to spraycans in shops to be restricted	5

Part 3**Repeal**

7	Manukau City Council (Control of Graffiti) Act 2008 repealed	6
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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Summary Offences (Tagging and Graffiti Vandalism) Amendment Act 2008.

2 Commencement

- (1) Section 6 comes into force on the day 3 months after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Summary Offences Act 1981.

Part 1**Graffiti vandalism****4 New sections 11A and 11B inserted**

- (1) The following sections are inserted after section 11:

“11A Graffiti vandalism, tagging, defacing, etc

A person is liable to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002) or a fine not exceeding \$2,000, or to both, if he or she damages or defaces any building, structure, road, tree, property, or other thing by writing, drawing, painting, spraying, or etching on it, or otherwise marking it,—

“(a) without lawful authority; and

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

“11B Possession of graffiti implements

A person is liable to a sentence of community work or a fine not exceeding \$500, or to both, if without reasonable excuse he or she has in his or her possession a thing capable of being used to commit an offence against section 11A in circumstances in which it can reasonably be inferred that he or she intends to use it to commit such an offence.”

- (2) Section 33 is consequentially amended by—
- (a) omitting “, **defacing, etc.**” from the heading; and
 - (b) repealing paragraph (b).

Part 2

Spraycans

5 New heading and section 14A inserted

- (1) The following heading and section are inserted after section 14:

“Spraycans

“14A Sale of spraycans to people under 18 prohibited

- “(1) A person who sells a spraycan to a person under the age of 18 years is liable to a fine not exceeding \$1,500.
- “(2) In any proceedings for an offence against subsection (1) in respect of selling a spraycan to a person (the **buyer**), it is a defence if the defendant proves that—
- “(a) the defendant is—
 - “(i) a Board (within the meaning of section 2(1) of the Education Act 1989), or an employee of a Board; or
 - “(ii) the governing body of a tertiary education provider (within the meaning of section 159(1) of the Education Act 1989), or an employee of a tertiary education provider; and
 - “(b) when the spraycan was sold, the buyer was enrolled at a school or institution managed by the Board or tertiary education provider; and
 - “(c) the spraycan was sold to the buyer to enable him or her to undertake the work of his or her course at the school or institution, or to complete an assignment or project for the school or institution.

- “(3) In any proceedings for an offence against subsection (1) in respect of selling a spraycan to a person (the **buyer**), it is a defence if the defendant proves that,—
- “(a) before or at the time of the sale of the spraycan, there was produced to the defendant a document purporting to be an evidence of age document; and
 - “(b) the defendant believed on reasonable grounds that the document—
 - “(i) was in fact an evidence of age document; and
 - “(ii) related to the buyer; and
 - “(iii) indicated that the buyer was of or over the age of 18 years.
- “(4) For the purposes of subsection (3), **evidence of age document** means a document that—
- “(a) contains—
 - “(i) a photograph of the person to whom it is issued; and
 - “(ii) information enabling the person’s age to be determined; and
 - “(b) is—
 - “(i) a New Zealand passport; or
 - “(ii) an overseas passport; or
 - “(iii) a driver licence issued under the Land Transport Act 1998; or
 - “(iv) a document of the kind described in section 2A(2)(d) of the Sale of Liquor Act 1989.”
- (2) Section 2(1) is amended by inserting the following definition after the definition of **serious drug offence**:
- “**spraycan** means a container (made of any material or materials) that—
- “(a) contains paint, dye, ink, or some other pigment; and
 - “(b) is so designed that the pigment it contains can be propelled from it (whether by a compressed or liquefied gas, or by mechanical means)”.

6 New section 14B inserted

- (1) The following section is inserted after section 14A (as inserted by section 5):

“14B Access to spraycans in shops to be restricted

- “(1) This subsection applies to a spraycan if—
- “(a) it is kept for sale in a part of a shop to which members of the public have access; and
 - “(b) it is not—
 - “(i) under the physical control of the occupier of the shop, or an agent or employee of the occupier; or
 - “(ii) under the physical control of a potential buyer who is being directly supervised by the occupier of the shop, or an agent or employee of the occupier; and
 - “(c) the shop is open to the public.
- “(2) The occupier of a shop must ensure that every spraycan in the shop to which subsection (1) applies is stored in such a way that members of the public cannot obtain possession of it without the help of the occupier, or an agent or employee of the occupier.
- “(3) The occupier of a shop who fails or refuses to comply with subsection (2) is liable to a fine not exceeding \$1,500.”
- (2) Section 2(1) is amended by inserting the following definition after the definition of **serious drug offence**:
- “**shop** means a building, place, or part of a building or place, where goods are sold by retail, or kept or offered for sale by retail; and—
- “(a) includes—
 - “(i) an auction mart; and
 - “(ii) a barrow, stall, or other subdivision of a market; but
 - “(b) does not include a building, place, or part of a building or place, where the only business carried on is that of selling goods to people who are dealers, and buy the goods to sell them again”.

Part 3

Repeal

**7 Manukau City Council (Control of Graffiti) Act 2008
repealed**

The Manukau City Council (Control of Graffiti) Act 2008 (2008 No 2 (L)) is repealed.

Legislative history

15 February 2008	Introduction (Bill 199–1)
21 February 2008	First reading and referral to Law and Order Committee
2 May 2008	Reported from Law and Order Committee (Bill 199–2)
20 May 2008	Second reading
17 June 2008	Committee of the whole House (Bill 199–3)
19 June 2008	Third reading
25 June 2008	Royal assent

This Act is administered by the Ministry of Justice.
