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The Manager, Policy & Analysis
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Dear Sir/Madam

Graffiti: submission by Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people. The Shopfront is a joint project of Mission Australia, The Salvation Army and the law firm Freehills. We are based in the inner city but work with young people aged 25 and under throughout the Sydney metropolitan area.

The Shopfront specialises in criminal law and represents young people in the Children's, Local, District and Supreme Courts. We also provide legal assistance in the areas of victims' compensation, family law, care and protection, fines and debts, and minor civil matters.

Thank you for the opportunity to provide a submission to this review.

How significant a concern is graffiti?

It is important to establish at the outset exactly what is meant by "graffiti". In a narrow sense the term is sometimes used to refer only to *illegal* graffiti, that is, words and images (such as "tags") painted on walls without the consent of the owner of the property.

However, the term "graffiti" is generally used in a broader sense to encompass *legal* as well as illegal graffiti. Legal graffiti (painted with the consent of the property owner) is not a problem and, indeed, can considerably enhance public amenity. Legal graffiti, in the form of murals and "pieces", is widely regarded as a legitimate art form. For example, Melbourne's "graffiti lanes" are now a nationally (and maybe internationally) recognised artistic attraction.

Illegal graffiti is clearly an issue of concern for our community, and to this extent the policy objectives of the legislation to reduce graffiti remain valid.

However, how serious a problem is illegal graffiti?

The percentage of malicious property damage incidents that are graffiti-related is still relatively low (10.2% in 2006).¹

According to the 1999 Australian Bureau of Statistics Survey of Crime and Safety, 25% of persons reported vandalism, graffiti or damage to property to be among the problems in their neighbourhood but only 4.9% perceived this to be a main problem in their neighbourhood. A paper by BOCSAR, which discusses the results of this survey, concludes that graffiti seems to be of the highest concern in areas without other major public order concerns².

There appears to be a perception held by some members of the community that graffiti is linked with violence; for these people, graffiti is a source of fear and anxiety. This fear, however, appears to be largely baseless. Evidence suggests that the majority of vandals confine their activity towards property rather than people.³ It is further stated by White that “Graffiti does not necessarily, nor logically, nor automatically, equate with criminality”.⁴

It is suggested that there is a group within graffiti culture that is attracted to the illegal element of the activity; these people are often involved in other high risk and criminal behaviours, including violence. However, these are thought to represent a minority.⁵

We suggest that there is a need for a public education campaign to dispel the perception that graffiti is inextricably linked to violence and other forms of crime, and the consequent fear associated with graffiti.

Current legislative provisions

There are currently a number of graffiti-related provisions in different Acts and Regulations. They are not entirely consistent with each other, and we suggest that some may be redundant.

In our experience, people accused of graffiti-related offences are invariably charged with malicious damage (*Crimes Act s.195*) and not with offences under the *Summary Offences Act* (e.g. s.7, 8, 9 and 10A).

Occasionally our clients are issued with infringement notices for graffiti or vandalism under clause 36 of the *Rail Safety (General) Regulation*. The amount of the penalty is generally \$400, which significantly exceeds the penalty that would

¹ Summary of NSW crime statistics on NSW Government *Stop Graffiti Vandalism* website, http://www.graffiti.nsw.gov.au/lawlink/cpd/ll_graffiti.nsf/pages/graffiti_index, as at 24 October 2007.

² Fitzgerald J., *Graffiti in New South Wales*, NSW Bureau of Crime Statistics and Research, Issues Paper No 5, March 2000, p 5.

³ Wilson P and Healy P., *Research Brief: Graffiti and vandalism on public transport*, Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*, No 6 (July 1987), p 3.

⁴ White R, *Graffiti, Crime Prevention & Cultural Space* (2001) 12(3) *Current Issues in Criminal Justice* 253, p 266.

⁵ Jones, M., *Graffiti Culture and Hip Hop – Working From Within*, Paper presented at the Graffiti and Disorder Conference by the Australian Institute of Criminology in conjunction with the Australian Local Government Association (18-19 August 2003), p4

be imposed by a Children's Court (or, in many cases, a Local Court) for such an offence.

In our experience the provisions relating to community service work and graffiti removal appear to be under-utilised, at least in most parts of metropolitan Sydney.

Benefits of legal walls

There have been a number of successful legal graffiti projects conducted by various local councils around New South Wales that demonstrate the benefits of erecting legal murals and walls in local communities.

The evidence appears to show that, if given a legal outlet for their art, many graffiti artists will avail themselves of this. Further, graffiti writers rarely graffiti on walls and surfaces they "respect", e.g. on top of murals painted by other artists.

For example, Wollongong City Council's annual Aerosol Arts projects allow participants to develop an understanding of other legal means of expression and provides an opportunity to create high quality and publicly acceptable works in public areas such as soccer clubs, child care centres and markets.⁶

Wollongong City Council's successful '2001 An Aerosol Odyssey' project saw a heavily graffitied community facility become the site of a large mural wall. This site was only damaged on one occasion in the two years since it was painted⁷

A similar outcome was observed by the Warringah Council as a result of establishing six legal graffiti walls in 1999. All of these sites were placed in the vicinity of buildings which had been the target of illegal graffiti over a long period of time. As a result of the establishment of the legal walls, there was an immediate reduction in the incidence of graffiti in nearby areas.⁸

Other Councils which have also experienced a reduction in graffiti incidents as a result of legal graffiti spaces include Hornsby Shire Council and Wyong Shire Council.⁹

The NSW Premier's Department has also recognised that legal alternative activities involving community arts, and graffiti art in particular, are a valuable part of broader crime prevention strategies which re-direct behaviour away from illegal activity.¹⁰

The importance of other youth friendly strategies being used to curb illegal graffiti is also recognised. These strategies promote community involvement, development of job and living skills, and a positive image of young people in the community.¹¹

⁶ Jones, M., above n 5, 5.

⁷ Jones, M., above n 5, 6.

⁸ Warringah Council, *Graffiti Policy and Strategy*, Report to Services Committee Meeting on 22 June 1999 (www.warringah.nsw.gov.au/council/documents/99062266.pdf).

⁹ Community Development Worker – Youth, *Legal Graffiti Sites*, Parramatta City Council Report (7 June 2004).

¹⁰ NSW Premier's Department (2000) *NSW Graffiti Solutions Handbook for Local Government, Planners, Designers and Developers*, p 6.

¹¹ Ibid.

Environmental/design factors

Graffiti is often described as being a reflection of young people's feeling of alienation from their physical environment.¹² It is therefore suggested that measures to make the environment more 'friendly' to young people such as, providing alternative activities for young people (including the establishment of legal walls) and developing a positive profile of young people in the community would go a long way in improving the sense of belonging for these young individuals.¹³

It has been suggested that the consideration of graffiti in the development of new urban designs (such as in public housing and other public places) to make them attractive and foster a sense of ownership by users, goes a long way to minimise opportunities for illegal graffiti.¹⁴

Proposed ban on sale of aerosol spray paint

Although aerosol spray paint is often used for illegal graffiti, there are many legitimate uses of aerosol spray paint which would be detrimentally effected if such a ban were implemented.

A complete ban on the sale of aerosol paint would negatively affect many legitimate and beneficial aerosol art projects, some of which have been mentioned above. These projects have also opened doors for many graffiti artists in a commercial sense in that they can provide profitable opportunities to participants by way of sign writing for local businesses which in turn has led to further work for other organisations.¹⁵

If the sale of aerosol spray paint were banned, graffiti writers would inevitably find other media with which to paint or draw graffiti. Such a ban is likely to cause an increase in the use of other instruments such as wide-tipped markers, paint sticks, pens and etching implements (e.g. glass cutters, rocks, keys, coins and chemical etching compounds), which are more easily accessible and easier to steal and conceal.¹⁶

The ineffectiveness of an outright ban on aerosol sprays has previously been illustrated in the US during the mid-1980s and early 1990s when measures were taken to restrict the sale of aerosol spray paint. In Chicago, a complete banning on the outright retail selling of wide-tipped marker pens and spray paints was imposed. However these measures were apparently unsuccessful in reducing the incidence of graffiti in these cities and did not prove to be the 'quick fix' that legislators hoped for.¹⁷

¹² Callinan, R., *Dealing with Graffiti in New South Wales*, Briefing Paper No 8 2002, NSW Parliamentary Library Research Service, p 12.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Jones M, above n.5, p9.

¹⁶ Fleming, P, *Is the Product the Problem? An Aerosol Industry Perspective*, Aerosol Association of Australia Inc. Paper presented at the Graffiti and Disorder Conference convened by the Australian Institute of Criminology in conjunction with the Australian Local Government Association (18-19 August 2003), p 4.

¹⁷ Ibid, 3.

Further feedback from the US indicates that glass etching vandalism increases significantly when access to other methods of tagging is restricted.¹⁸ It is therefore argued that a ban on aerosol spray cans will lead to a displacement by taggers to more destructive forms of graffiti such as “glass etching”, which is already emerging as a significant problem throughout Australia.¹⁹

Ban on sale of aerosol spray paint to under-18s

In our view, the current law banning the sale of spray paint cans to persons under 18 is unfairly discriminatory. Young people (particularly those under 18) are often unfairly demonised as being exclusively responsible for graffiti vandalism.

We concede that statistics suggest that under-18s are responsible for the majority of graffiti-related offending (recorded crime statistics suggest that about 75% of persons of interest proceeded against for graffiti-related offences are under 18).²⁰ However, we suggest that this is partly a reflection of police targeting of under-18s, and also the fact that children are generally less sophisticated offenders (and thus more likely to be apprehended) than adults.

Other possible legislative and policy responses

In a NSW Parliamentary Library Briefing Paper²¹, it is suggested that the USA is one of the most “progressive and experimental” countries in regard to graffiti initiatives. There is nothing in the paper about the effectiveness of these initiatives.

We would not necessarily agree that some of the initiatives described in this paper are “progressive”; further, the Briefing Paper does not provide any evidence about the effectiveness of these initiatives.

One of the least progressive initiatives undertaken in the USA is revoking graffiti offenders’ drivers’ licences. We would be strongly opposed to any similar measure being adopted in NSW. The practice of imposing licence sanctions on people who default on non-traffic fines has attracted severe criticism from a number of individuals and organisations, including the NSW Sentencing Council. The detrimental effects of this practice, not just on fine defaulters but on the wider community, have been clearly demonstrated²².

Summary and recommendations

In summary, the Shopfront Youth Legal Centre recommends:

1. There are already adequate legislative provisions to deal with illegal graffiti. Any legislative amendment should involve repealing existing provisions rather than adding new ones.

¹⁸ Ibid.

¹⁹ Ibid, 4.

²⁰ NSW Government, *Stop Graffiti Vandalism* website, available at http://www.graffiti.nsw.gov.au/lawlink/cpd/ll_graffiti.nsf/pages/graffiti_index, as at 24 October 2007.

²¹ Callinan R, above n. 12, p31

²² See *The Effectiveness of Fines as a Sentencing Option: court-imposed fines and penalty notices*, Interim Report, NSW Sentencing Council, October 2006, especially Part 5.

2. A ban on the sale of aerosol spray-paint should not be imposed, and the current prohibition on its sale to under-18s should be repealed.
3. The provision of legal graffiti walls and aerosol art projects should be encouraged and expanded.
4. Given the NSW Government's expressed commitment to evidence-based criminal justice policies, we suggest that BOCSAR should be commissioned to perform research about the effectiveness of different legislative and policy strategies in combating illegal graffiti. This should be done before the enactment of any new legislation, such as a provision to further restrict the sale of aerosol spray paint.

Thank you for considering this submission. If you wish to discuss any issues arising, please contact me on 9322 4808 or at jane.sanders@freehills.com.

Yours faithfully

Jane Sanders
Principal Solicitor