

# The Shopfront

## YOUTH LEGAL CENTRE

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### Graffiti

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#### 1 Is it legal?

If you are tagging someone's property without their consent – NO. This fact sheet tells you about some of the offences and penalties relating to illegal graffiti.

If you have consent from the owner of the property – mostly, YES, but here are some things to watch out for:

- you could be guilty of offensive conduct if reasonable people would find your graffiti offensive.
  - even if the owner of a building lets you put up a piece on their wall, you might be forced to remove it if it doesn't fit in with local planning laws and doesn't have council approval.
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#### 2 Offences relating to graffiti

##### 2.1 Offences under the *Graffiti Control Act*

- **Defacing walls or posting bills** - posting paper or marking on walls with chalk, paint, or any material (*Graffiti Control Act section 6*)

*Maximum penalty: \$440 fine.*

- **Damaging or defacing property by graffiti implement** – a graffiti implement can include spray paint, a marker pen or something which produces a mark not easily removed by wiping or washing (*Graffiti Control Act section 4*)

*Maximum penalty: \$2200 fine or 12 months imprisonment (or community service at the court's discretion, which may include a graffiti clean-up order).*

- **Having graffiti implement in your possession with intention to use it to damage or deface property** (*Graffiti Control Act section 5*)

*Maximum penalty: \$1100 fine or 6 months imprisonment (or community service at the court's discretion, which may include a graffiti clean-up order).*

##### 2.2 Offences under other Acts

- **Intentionally or recklessly destroy or damage property (often called "malicious damage")** (*Crimes Act section 195*). This may include graffiti and is the most common charge laid against people for graffiti.

*Maximum penalty: 5 years imprisonment (or 10 years if destruction/damage is caused by fire/explosives).*

- **Having custody of an offensive implement** – as well as weapons, offensive implements can include things intended to be used to damage property (*Summary Offences Act section 11B*)

*Maximum penalty: \$5,500 fine or 2 years imprisonment.*

- **Vandalism or wilful damage on public transport** – (*Passenger Transport Regulation clauses 57 and 61*)  
*Maximum penalty: \$2,200 fine*

### 2.3 Special laws relating to people under 18

If you are under 18, it is not illegal to buy or possess spray paint, but:

- **It is an offence to sell a spray paint can to a person under 18** (*Graffiti Control Act section 7*)  
*Maximum penalty: \$1,100.*
- **If you are under 18 and have a spray paint can in a public place, police may confiscate it from you**, unless you can convince them that you have it for a lawful purpose (*Graffiti Control Act section 9*).

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## 3 Penalties for graffiti offences

### 3.1 Sentencing options

The fines and prison terms listed above are all *maximum* penalties, which are rarely imposed.

In most cases the court can impose alternative penalties such as a good behaviour bond or a community service order.

For offences under the *Graffiti Control Act*, there are extra orders that a court may make.

For under-18s, there may also be other options under the *Young Offenders Act*.

### 3.2 *Young Offenders Act* options for under-18s

If you are under 18, for certain types of offences you may be eligible for a warning, caution or youth justice conference instead of having to go to court.

For most minor summary offences not involving violence, the police can give an informal on-the-spot warning. In many other cases, police can give a formal caution or refer the matter to a youth justice conference without the young person having to go to court.

Following changes to the law that took effect on 10 December 2012, the police no longer have these options available for offences under the *Graffiti Control Act*. However:

- the Children's Court may still give a young person a caution or refer them to a youth justice conference for an offence under the *Graffiti Control Act*, and
- the police *or* the court may still give a young person a caution or refer them to a conference for other types of graffiti offences (eg destroy/damage property under the *Crimes Act*).

### 3.3 Graffiti clean-up orders

For offences under section 4 or 5 of the *Graffiti Control Act* (damaging property by a graffiti implement, or possessing a graffiti implement with intention to damage property), a court may make a "graffiti clean-up order" instead of a fine (*Graffiti Control Act* section 13B).

Following changes to the law which came into force on 10 December 2012, if a court imposes a community service order for a graffiti offence, the order must contain graffiti clean-up conditions unless this is not practicable in the circumstances (*Crimes (Sentencing Procedure) Act* section 90, *Children (Community Service Orders) Act* section 11).

### 3.4 Driver licence orders

Another change that took effect on 10 December 2012 is that, in addition to whatever penalty a court imposes for an offence under the *Graffiti Control Act*, the court may make a “driver licence order” (*Graffiti Control Act* sections 13B(2), 13C-13E).

This means that, if you have a learner or provisional licence, the court may make you stay on your Ls or Ps for up to six months longer before progressing to the next level.

The court may also make an order requiring you not to incur 4 demerit points or more for a period of up to 6 months. This would be relevant to people with P2 or full licences (on your Ls or P1s you are not allowed to incur more than 4 demerit points anyway).

These orders can only be made if you are guilty of an offence under the *Graffiti Control Act* (not, for example, destroy/damage property under the *Crimes Act*).

#### **The Shopfront Youth Legal Centre Updated April 2013**

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*The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and the Salvation Army.*

*This document was last updated in April 2013 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.*

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