

## **Submission concerning the statutory review of the Graffiti Control Act 2008 (NSW) (the Act).**

The New South Wales Council for Civil Liberties is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006). Founded in 1963, NSWCCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies.

CCL is grateful for the invitation to make this submission. We will be happy to elaborate further, by supplementary submission or in person, if that is desired.

### **A. Endorsement of other submissions.**

We have had the benefit of perusing the submissions of the Public Interest Advocacy Centre (PIAC) and of the Legal Aid Commission of NSW (Legal Aid). We endorse those submissions. We note PIAC's argument that the producers of graffiti are likely to be under 18, and are rarely involved in other illegal activity.

In particular, we endorse the concerns expressed by PIAC concerning the penalty of six months' imprisonment of young adults and persons under the age of 18. Placing such people in a Juvenile Justice Centre at all, and certainly for so long, exposes them to the influence of more serious offenders and to a culture of repressed rebelliousness and low self-image in which reform will be difficult.<sup>1</sup>

We share also the concerns expressed by Legal Aid concerning the use of fines. The ability of many teenagers to pay fines varies more with the wealth of their parents and the willingness of those parents to support their children than on any inherent or behavioural characteristic of the children. Fines that is, discriminate against poor and uncared for children. There can be, moreover, serious consequences if fines are not paid.

We support therefore Legal Aid's preference for youth justice conferences, with the option of clean up orders, over incarceration. And we support PIAC's call for an appeal to be available where a clean up order is **not** made by a court and a fine is imposed instead—for the amendment, that is, of section 9N of the Act.

### **B. New material.**

*Imprisonment for six months.*

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<sup>1</sup> Indeed, imprisoning young people may even increase the likelihood of their reoffending.



New South Wales  
Council for  
Civil Liberties

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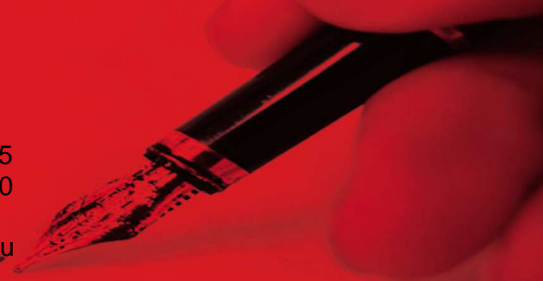
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Apart from the above concerns, we consider six months imprisonment to be excessive for a graffiti offence, even though the defendant must be a repeat offender. Graffiti are unsightly and it is a nuisance, and sometimes expensive, to remove them. But creating graffiti is much less of a harm than locking up a person for six months. There are absolute limits on the justification of penalties.<sup>2</sup> The deterrence effect of larger penalties, moreover, is known to be slight.

### *The right to property.*

Subsection 12.1 of the Act allows the removal of graffiti from a building without the approval of the owner—provided the graffiti are visible from a public place. This is an intrusion upon the right to property. An owner should have the right to paint their property with whatever they desire. Even if it is “visible from a public place”, the property is fundamentally their possession, and subject to such laws as legitimately limit freedom of expression they should be allowed to do what they like with it. They should be allowed to paint murals, or to have them painted, or to permit them to be painted, for example. Or they may be prepared to allow their walls be a space for graffiti—even for tag writing.

If the Parliament wishes instead to maintain subsection 12.1, provision should be made for an owner to obtain permission to create and keep their graffiti.

### *A more creative approach.*

Much money and time is spent in removing graffiti from public spaces. For instance, along the railway line coming into the city, money is continually spent to remove any graffiti by painting over it with a brown paint. A more creative approach is desirable. For instance, local councils should be working together with local graffiti artists to make these walls a city attraction, to brighten the journey with colours of artistic poetry, design and local urban social commentary and identity. The initiative could allow artists to participate and see the benefits/capabilities of the artworks, and potentially taking them away from illegally “vandalising” public space.

Martin Bibby

For the Executive, New South Wales Council for Civil Liberties.

August 30, 2012.

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<sup>2</sup> See for instance Martin Bibby, 1989 ‘Children’s Rights: A Philosophical Analysis’, Australian Social Policy Vol. 1 No. 2 pp. 1-12.