



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG455351

10 June 2011

The Hon. Greg Smith SC MP
Attorney General and Minister for Justice
Level 31
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

Graffiti Legislation Amendment Bill 2011

The Law Society's Criminal Law Committee and Juvenile Justice Committee (Committees) have reviewed the *Graffiti Legislation Amendment Bill 2011* and have grave concerns.

The Committees' specific comments on the Bill are set out below for your consideration:

Removal of pre-court diversion

- The proposed amendments to the *Young Offenders Act 1997* to remove the power for police to deal with young offenders who have committed graffiti offences by way of caution, warning or youth justice conference is of great concern.
- The removal of pre-court diversion is contrary to the principle that criminal proceedings should not be instituted against a child if there is an alternative and appropriate means of dealing with the matter. The proposed amendments are a further move away from the carefully crafted system of diversion that was originally devised when the *Young Offenders Act 1997* was introduced.
- Requiring a young person charged with a graffiti offence to appear before court will unnecessarily increase the financial and social costs of responding to alleged young offenders.
- It is unjust and inconsistent that other young people will be able to receive pre-court diversion for other more serious offences.

Community Service Orders (CSO)

- The Committees are concerned that the court may increase the sentence up to a CSO (a direct alternative to imprisonment) in order to impose the compulsory graffiti clean up condition, when the appropriate penalty for an offence of this nature is commonly not a custodial sentence or a CSO.

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- The Committees note that the rectification of the damage to property and participation by victims in deciding what needs to be done to repair the damage could otherwise be, and often has been in the past, addressed in the outcome plan from a youth justice conference.
- If the use of CSOs for graffiti offenders increases, this may have implications for the bail and remand population. The Committee is concerned that there will be more curfews and non-association conditions imposed on young people who might currently be dealt with by way of warnings, formal cautions, or referrals to a youth justice conference. Breaches of CSOs can result in time in custody in a detention centre.
- The amendments will cause difficulties in regional areas, where formal graffiti clean up programs often do not exist. This could result in yet another instance in which young people in regional areas suffer because instead of imposing a CSO Magistrates may consider imposing a custodial sentence rather than dealing with them by way of caution or referral to a youth justice conference.

Driver licence sanctions

- The Committees are opposed to the imposition of driver licence sanctions for offences that are completely unrelated to driving.
- This approach has failed when it comes to fine enforcement in respect of young people. Licence sanctions may work for relatively stable, employed, middle-class adults. However, the young people who commit graffiti offences are likely to be among the most marginalised in the community, and licence sanctions only exacerbate their hardship.
- The Committees query the logic of making the already very difficult task of obtaining a driver's licence for disadvantaged young people even more difficult. Extending the period that young people may be required to hold learners or provisional licences is onerous. It could cost job opportunities and place undue pressure on the family who have to "supervise" a learner whilst driving (especially for those young people most likely to be committing graffiti offences who often have little parental control and/or huge social and economic obstacles to overcome). Suspending a young person's licence for a graffiti offence will inevitably increase the number of driving offences committed by these young people, who may well drive whilst suspended.

Yours sincerely,


Stuart Westgarth
President