



A Coalition of Youth, Legal and Welfare Workers

The Director  
Criminal Law Review  
Department of Attorney General and Justice  
GPO Box 6  
Sydney NSW 2001

3 September 2012

Dear Director

**Statutory Review of the *Graffiti Control Act 2008 (NSW)***

The Youth Justice Coalition (YJC) thanks the NSW Department of Attorney General and Justice for the opportunity to comment on the statutory review of the *Graffiti Control Act 2008 (NSW) (Act)*.

We understand that this review will not consider the proposed amendments contained in the *Graffiti Legislation Amendment Bill 2011 (NSW)*, which remain before Parliament. The YJC has written to the Attorney General in respect of this Bill (letter dated 26 July 2011), and the YJC would welcome the opportunity to be involved in any further consultation regarding this Bill.

**About the Youth Justice Coalition**

The YJC is a network of youth workers, children's lawyers, policy workers and academics working to promote the rights of children and young people in New South Wales.

The YJC aims to promote the rights of children and young people, to promote appropriate and effective initiatives in areas of law affecting children and young people, and to ensure that children's and young people's views, interests and rights are taken into account in law reform and policy debate.

**The Youth Justice Coalition's Comments**

The stated aim of the Act, which commenced on 20 February 2009, was to consolidate existing graffiti laws, and to introduce some new graffiti related offences.<sup>1</sup>

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<sup>1</sup> NSW Parliament, Second Reading: Graffiti Control Bill, 26 November 2008  
<http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20081126044>

The YJC notes that there is no publicly available data on the use of the Act in its first years of operation. Further to this, the time frame for submissions to this review did not allow for requests to be made to access public information.

The YJC has however observed that the Act is currently not being widely utilised either by police in determining initial charges, or by magistrates in ordering community clean up work. The YJC would welcome data on the application of the Act by both NSW Police and the judiciary.

## **Young people**

Graffiti is acknowledged to form part of adolescent antisocial behaviour.<sup>2</sup> Accordingly graffiti legislation is of particular significance for young people. With this in mind, we note that rehabilitation and diversion have underpinned children's and young people's contact with the New South Wales criminal justice system since the late 1980s.

The YJC is of the view that the *Young Offenders Act 1997* (NSW) is the most appropriate way for young people to be dealt with for graffiti related offences. A youth justice conference involves offenders and property owners deciding what is appropriate in terms of repairing damage and requires a young person contemplate the consequences of their actions. Young offenders referred to youth justice conferences often have restitution for damage caused included in the outcome plan reached at the conference. In our experience, this often includes graffiti clean up. This rehabilitative process is preferable over control orders, which have been shown to be ineffective in reducing rates of recidivism and in acting as a deterrent for crime.<sup>3</sup>

## **Penalties under the Act**

The current penalties under the Act are severe, including hefty fines and imprisonment in limited circumstances. Anecdotally, the YJC has noted an increase in the use of fines for graffiti offences, both as penalty notices issued directly, and as a sentencing option at court.

It is well established that fines contribute to the difficulties of vulnerable people, particularly young people, people experiencing unemployment, and those with intellectual or mental disabilities.<sup>4</sup> A young person rarely if ever has financial means to meet fine debt. The imposition of fines does not accord with current restorative approaches in juvenile justice.

The consequences of unpaid fines, including driver licence sanctions and property seizure orders, have serious implications in terms of entrenched

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<sup>2</sup> Smart, Diana et al 2004, 'Patterns of antisocial behaviour from early to late adolescence' Trends & issues in crime and criminal justice no. 290, Australian Institute of Criminology, p4

<sup>3</sup> Sentencing Advisory Council 2001, 'Does Imprisonment Deter? A Review of the Evidence', Victoria 12-13 and Department of Human Services, 2001 'Recidivism among Victorian Juvenile Justice Clients' 1997-2001, Victoria 17

<sup>4</sup> NSW Sentencing Council, The Effectiveness of Fines as a Sentencing Option, October 2006 [http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/interim\\_report\\_on\\_fines.pdf](http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/interim_report_on_fines.pdf), p5

poverty and secondary offending. This has been canvassed in detail in other reviews.

Whilst the Act provides some protections against the imposition of custodial orders, it is an available sentencing option where an individual has previously been convicted under the Act, such that the court is satisfied that they are a 'serious and persistent offender'.<sup>5</sup> In the YJC's view, a control order for a young person in such circumstances would not reflect the nature of the offences committed, nor would it accord with the Government's commitment to rehabilitative and re-integrative principles of juvenile justice.

### **Graffiti prevention strategies**

Legislation aside, alternative responses to graffiti including murals, legal walls and legal art programs have been shown to have positive effects in reducing the number of graffiti incidents with such programs adopted by a number of city councils (including Leichhardt, Warringah and Wollongong).<sup>6</sup> Increased Government funding is required to support these initiatives. The YJC calls for greater understanding of the nature of graffiti, of graffitists and the role of local context in developing effective graffiti prevention strategies.<sup>7</sup>

Thank you for considering this submission. If you require further information please contact the Youth Justice Coalition on ph 9559 2899, or at [yjc@clc.net.au](mailto:yjc@clc.net.au).

Sincerely



Emily Muir  
Convenor

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<sup>5</sup> ss4(2), 5(2) and 8(5) of the Act

<sup>6</sup> Black, M 'Youth Focused Graffiti Reduction Study' paper prepared for Blue. Mountains City Council and Mountains Youth Services, June. 2009

<sup>7</sup> Morgan A & Louis E 2009 'Key Issues in graffiti', Research in Practice no.6, Canberra: Australian Institute of Criminology