

I comment the bill to the house.

Debate adjourned on motion of Mr THOMPSON (Sandringham).

Debate adjourned until Thursday, 4 October.

GRAFFITI PREVENTION BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (referred to as the Charter), I make this statement of compatibility with respect to the Graffiti Prevention Bill 2007 (referred to as the Graffiti Prevention Bill).

In my opinion, the Graffiti Prevention Bill, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The Graffiti Prevention Bill seeks to:

- reduce the significant financial and social costs of graffiti to the Victorian community;
- provide a strong deterrent to perpetrators of graffiti and promote the accountability of those perpetrators for their actions; and
- reduce the incidence of graffiti in Victoria.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Structure of the Graffiti Prevention Bill

Various clauses in the Graffiti Prevention Bill raise various human rights concerns.

Clause 5 of the Graffiti Prevention Bill makes it an offence for a person to mark graffiti on property that is visible from a public place without the property owner's consent.

Clause 6 makes it an offence for a person to mark graffiti that is visible from a public place if the graffiti would offend a reasonable person and provides an exception for graffiti that is reasonable political comment.

Clause 7 makes it an offence for a person to possess a prescribed graffiti implement without lawful excuse while on the property of a transport company, in an adjacent public place or in a place where the person is trespassing.

Clause 8 makes it an offence for a person to possess a graffiti implement with the intention of contravening clause 5 or clause 6 of the bill.

Clause 9 makes it an offence to advertise for sale a prescribed graffiti implement if the advertisement is likely to incite or promote unlawful graffiti and the person intends the advertisement to incite or promote unlawful graffiti. Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an Internet site, that itself contains images that incite or promote unlawful graffiti, is proof that the advertisement is likely to incite or promote unlawful graffiti in the absence of evidence to the contrary.

Clause 10 makes it an offence to sell a spray paint can to a person under the age of 18 unless the person demonstrates that he or she needs the paint for employment purposes.

Clause 12 provides for the issue of a search warrant where there are reasonable grounds for believing that an offence against the bill has been or is being committed.

Clause 13 allows a police officer, in certain circumstances, to search a person without warrant and to seize a prescribed graffiti implement or evidence of the commission of an offence against the bill.

Clause 14 regulates how a search of a person aged under 18 years can take place. The clause allows for a person aged between 14 and 17 years old to be subjected to a 'pat-down' search. No search can take place of a person aged under 14 years.

Clause 15 sets out how a search of a person must be conducted under the bill. A search must be conducted in a manner that affords reasonable privacy to the person being searched and must be conducted as quickly as is reasonably practicable. If, before or during a search, the officer reasonably suspects that the person is aged under 18 and is inhaling or will inhale a volatile substance, the officer must stop the search and deal with the person under Division 2 of Part IV of the Drugs, Poisons and Controlled Substances Act 1981.

Clause 18 provides that a local council may take any action necessary to remove or obliterate graffiti on private property if the graffiti is visible from a public place. This includes entry to private property if entry is necessary to remove or obliterate the graffiti and consent has been obtained from the owner or occupier.

Clauses 24 and 25 prescribe the forfeiture of seized graffiti implements and their return in certain circumstances.

Section 8: recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to equal protection of the law without discrimination. Discrimination, in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act.

Clause 10 of the Graffiti Prevention Bill prima facie limits this right because it draws distinctions between people based on age, which is an attribute in the Equal Opportunity Act 1995. However, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Clause 24(6) raises the right of every person to be equal before the law in that it means that a person aged under 18 must be accompanied by a parent or guardian when collecting a graffiti implement that was previously seized. However, this clause is designed to ensure that the child, in returning home with the graffiti implement, does not unwittingly become further entangled with the law. In this way, the clause seeks to give effect to section 17(2) of the charter by giving the child protection in his or her best interests because he or she is a child.

Section 12: freedom of movement

Section 12 of the charter states that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Clause 7 of the Graffiti Prevention Bill limits the freedom of movement of a person by preventing a person from legally entering upon certain defined property while possessing a spray paint can without a lawful excuse. However, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Clauses 12 and 13 limit the right to freedom of movement because they allow a person to be stopped and searched for evidence that they have committed an offence under the bill. While being so searched, the person will prevented from moving. However, as stated above, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Section 13: privacy and reputation

Section 13(4) of the charter requires that a public authority must not unlawfully or arbitrarily interfere with a person's bodily privacy or home. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. Although the bill does not provide that the restrictions on privacy are in accordance with the objectives of the charter and are reasonable, given the circumstances.

Clauses 12 and 13 of the Graffiti Prevention Bill raise the right to privacy because the clauses allow a person or a person's premises to be searched in certain circumstances.

However, both clauses limit the circumstances in which a search of a person or of a person's premises can take place. In Clause 12, those circumstances arise only when a police officer has made out on oath that there are reasonable grounds for believing that an offence against the bill has been or is being committed. If this leads to the issue of a search warrant, the warrant must be issued in accordance with the Magistrates Court Act 1989. In Clause 13, those circumstances arise only when a police officer has reasonable grounds for suspecting that a person has in his or her possession a prescribed graffiti implement on property or in a place referred to in clause 7 and that evidence could be lost or destroyed if a search is delayed until a search warrant is obtained. Clause 13 also sets out matters that the officer may take into account when determining that there are reasonable grounds for his or her suspicion and it regulates how the search can take place. The interferences with privacy enabled by the clauses are not unlawful as the powers to search are

confined and structured and are reasonable in the circumstances. The interference with privacy is authorised on a case by case basis according to the specific circumstances involved. Therefore, in neither case is the right to privacy unlawfully or arbitrarily interfered with and there is no limitation of the right provided for in section 13 of the charter.

Clause 18 raises the right to privacy in that it allows persons to enter private property and remove from it graffiti. However, the right in section 13 guarantees privacy where it is not unlawfully or arbitrarily interfered with. Clause 18 allows entry only in circumstances in which both notice is given to the owner or occupier of the property at least 28 days before the entry is to take place. Furthermore, the notice must specify particulars of the action proposed to remove the graffiti and the proposed date and method of the removal. Finally, the owner or occupier must give consent to the entry and removal in the absence of that consent, no entry takes place. Accordingly, the clause does not allow any unlawful entry nor does it permit it to take place arbitrarily.

Section 15: freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, whether within or outside Victoria and in any medium, including by way of art. Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality. Public order may be defined as the sum of rules which ensure the peaceful and effective functioning of society. Common public order limitations on the right to freedom of expression include prohibitions on speech that may incite crime, violence, or mass panic.

Clause 5 of the Graffiti Prevention Bill interferes with a person's right to freedom of expression by making it an offence for a person to mark publicly-visible graffiti on property without the consent of the owner of that property. However, the clause protects the property rights of the owner by requiring the property owner's express consent to the marking of graffiti on their property. The clause is therefore a lawful restriction reasonably necessary to respect the rights and reputation of other persons, pursuant to section 15(3) of the charter.

Clause 6 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by making it an offence for a person to mark publicly-visible graffiti on property if the graffiti would offend a reasonable person, regardless of whether the owner of the property consents. An example of such graffiti might include a racist or sexist slogan painted on a wall that offends a reasonable person. The clause protects public order and public morality by preventing the marking of publicly visible comments that would offend the community, while still allowing reasonable political comment. The clause is therefore a lawful interference with the right to freedom of expression as permitted by section 15(3) of the charter.

Clause 9 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by making it an offence to advertise a prescribed graffiti implement if the advertisement is likely to incite or promote unlawful graffiti.

However, the right may be subject to lawful restrictions reasonably necessary to protect public order. In this context, public order includes the need to prevent people from profiting from the sale of items advertised in such a way that the marking of illegal graffiti is noticed or promoted. An example of this has been described in a Melbourne newspaper of a store that advertises its business on an internet graffiti website that depicts images of clearly illegal graffiti on Melbourne's public transport system. The business specialises in the sale of spray paint cans, nozzles for spray paint cans adapted specifically for graffiti, and books and magazines relating to graffiti culture. The clause protects public order by preventing someone from attempting to profit through another's illegal activities. The clause lawfully and reasonably restricts the right to freedom of expression as permitted by section 15(3) of the charter.

Clause 10 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by restricting access to a medium of expression (that is, spray paint cans) to persons under the age of 18 years old. However, the right may be subject to lawful restrictions reasonably necessary to protect public order. In this context, public order includes the need to protect the public from the application of unlawful graffiti to private and public property. More graffiti in Victoria is applied by spray paint than by any other form of graffiti implement and most offenders apprehended for graffiti-related offences are aged 18 years or under. Limiting the availability of spray paint to those aged under 18 will minimize the work already being undertaken by a number of municipal councils who have passed by-laws that restrict the sale of spray paint in their local government areas and who have reported a decline in graffiti applied in those areas. The clause lawfully and reasonably restricts the right to freedom of expression as permitted by section 15(3) of the charter.

Section 17: protection of families and children

Section 17(2) of the charter provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by reason of being a child.

Clause 14 of the Graffiti Prevention Bill provides that a member of the police force must not search a person who is or appears to be under 14 years of age. This clause upholds the right of the child to such protection as is in his or her best interests by reason of being a child. Furthermore, any search of a person aged under 18 under the Bill can only be a pat-down, and not a full search.

Clause 15(3) of the Graffiti Prevention Bill states that a police officer must take a welfare, rather than a law enforcement approach to a person aged under 18 years whom the officer suspects of both contravening clause 7 and inhaling a volatile substance. In the absence of clause 15(3), the officer would be obliged to enforce the law against the person in circumstances in which it would not be appropriate to do so. Clause 15(3) therefore ensures consistency with the right that a child has to such protection as is in his or her best interests as is needed by him or her by reason of being a child. The clause enhances that right by recognising that it is in the best interests of a child who is inhaling a volatile substance to be subject to a welfare response.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with the law.

Clause 13 of the Graffiti Prevention Bill raises rights relating to property because, in certain circumstances, it allows a police officer to seize a prescribed graffiti implement or other evidence of the commission of an offence under the bill. However, the right in section 20 of the charter only prohibits a deprivation of property that is carried out other than in accordance with law. Property can lawfully be seized pursuant to clause 13 if a police officer has reasonable grounds for suspecting that a person has in his or her possession a prescribed graffiti implement on property or in a place referred to in clause 7 and that evidence of this could be lost or destroyed if a search is delayed until a search warrant is obtained. The clause also sets out matters that the officer may take into account when determining that there are reasonable grounds for his or her suspicion and it regulates how the search can take place. The power to seize property is therefore devised precisely to guide those who apply the law. The power is confined and structured, formulated in a precise manner and accessible to the public. Further, the power to deprive a person of property to which this clause applies will take place under powers conferred by legislation. The deprivation of property will therefore be in accordance with law, and there is no limitation of the right granted in section 20 of the charter.

Clauses 24 and 25 of the Graffiti Prevention Bill raise rights relating to property rights. Clause 24 provides for the forfeiture of a graffiti implement that has been seized from a person who has been found guilty of an offence against the bill, or found not guilty of such an offence because of mental illness, or in certain circumstances when the person has been served with an infringement notice for such an offence. Clause 25 provides for the return of that implement when proceedings against the person are not brought or are discontinued. The effect of the two clauses is that a graffiti implement will generally be forfeited when a person is found guilty of an offence under the bill and generally returned to the person when the person is not found guilty of an offence under the bill. The provision for the forfeiture of property is formulated in a precise manner and will occur only under powers conferred by legislation. Therefore, the deprivation of property will occur in accordance with the law and there is no limitation of the right to property section 20 of the charter.

Section 21: personal liberty and security

Section 21(3) of the charter provides that every person has the right to liberty and security, that a person must not be subjected to arbitrary arrest or detention, and that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Clauses 12 and 13 of the Graffiti Prevention Bill engage with the right to personal liberty in that they allow a person to be detained in order that the person may be searched for evidence that indicates that a breach of the bill has occurred or is occurring. However, the deprivation of liberty will occur on grounds and in accordance with procedures established by law. Both clauses set out in detail the circumstances in which a person may be subjected to such a search. In addition, clause 14 regulates how the search may be carried out. It provides that a search must be carried out in a manner that affords reasonable privacy to the person being searched and as quickly as is reasonably possible. Any deprivation of

liberty caused by a person being searched pursuant to the bill will be short-lived and temporary and proportionate to the purpose of preventing the commission of an offence under the bill or to seek evidence of the commission of such an offence. There is therefore no impermissible limitation on the right in section 21 of the charter.

Section 25: rights in criminal proceedings

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 7 of the Graffiti Prevention Bill interferes with the right in section 25(1) of the charter because the clause places on the accused an evidential burden to demonstrate the existence of a lawful excuse for carrying a spray paint can in a designated geographical area. However, the right is not absolute and is subject to a reasonable limitation pursuant to section 7 of the charter, as discussed in part 2.

In certain circumstances, clause 9 of the Graffiti Prevention Bill may interfere with the right in section 25(1). The clause creates an offence with two elements. The prosecution must prove the existence of both elements for it to secure a conviction. The first element is that the person advertised for sale a prescribed graffiti implement that is likely to incite or promote unlawful graffiti. The second element is that the person intended the advertisement to incite or promote unlawful graffiti.

Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an internet site, that itself contains images that incite or promote unlawful graffiti, is evidence that the advertisement is likely to incite or promote unlawful graffiti. That is, evidence of the first element of the offence. To counteract this evidence, the accused could offer evidence that showed that those images were not in fact likely to incite or promote unlawful graffiti. In the absence of any contrary evidence brought by the accused, the court must accept that the first element of the offence has been proved. This interferes with the right in section 25(1) of the charter because the clause places on the accused an evidential burden to demonstrate the existence of evidence that shows that the advertisement is not likely to incite or promote unlawful graffiti. However, as is stated above, the right in section 25(1) is not absolute and is subject to a reasonable limitation pursuant to section 7 of the charter, as discussed in part 2.

2. Consideration of reasonable limitations — section 7(2)

Section 8 of the Charter: recognition and equality before the law and clause 10 of the Graffiti Prevention Bill

(a) What is the nature of the right being limited?

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in accordance with section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to assist in reducing the incidence of graffiti vandalism to a significant extent by making it more difficult for minors to access the most common and preferred graffiti implement. The purpose is important because it seeks to reduce the defacing of private

and public property, which involves a considerable cost to, and diminishes feelings of security and confidence within, the community.

(c) What is the nature and extent of the limitation?

The nature and extent of the limitation is the restriction of the sale of a specific item, namely a spray paint can, to a person under 18 years old. The limitation on the right can not extend to possession or use of such items, except in contribution of the offence in clause 7 of the Graffiti Prevention Bill. The proposed restriction and the bill overall, does not affect the general use of a spray paint can except where it is used for the prohibited marking of graffiti. A person under 18 years old may still use a spray paint can at work, at school, at home or elsewhere. However, the restriction will also affect those people under the age of 18 who wish to purchase a spray paint can for a legitimate and lawful purpose, and will have to approach an adult, such as a parent, to obtain one. The restriction will operate so as to discriminate against those persons on the ground of their age.

(d) What is the relationship between the limitation and its purpose?

There is a rational connection between the limitation on the right and its purpose, in that the restriction on the sale of spray paint cans to minors aims to stop those persons who intend to mark graffiti from obtaining the means to do so. Statistics from Victoria Police indicate that of all of persons apprehended for graffiti crimes in the five years between 2001 and 2006, on average nearly 69 percent were aged 18 years or under. There is evidence available that such a restriction is likely to have the effect of reducing the incidence of unlawful graffiti. For example, a number of local councils, such as the City of Casey and the City of Boroondara, have already passed local laws that restrict the sale of spray paint to persons under the age of 18 and have reported a reduction in the amount of graffiti applied in their local government areas as a result of these local laws. Casey indicated that it has achieved a 70 per cent reduction in the area of graffiti requiring removal following introduction of the law.

(e) Are there any less restrictive means reasonably available to achieve its purpose?

Other means already exist for the reduction of unlawful graffiti by minors and some additional ones are proposed in the bill. Such measures include the criminalisation of certain graffiti marking, early clean up and general removal initiatives, education for minors and offenders, prohibition of the possession of graffiti implements in certain places, and new search and seizure powers. Some of these measures are less restrictive and some are more restricted than the restriction on the sale of spray paint to minors. Given the inherent difficulty in preventing widespread marking of graffiti on public and private property across Victoria, the restriction will operate simply as one of a range of measures designed to reduce the illegal marking of graffiti.

(f) Are there any other relevant factors?

There are no other relevant factors.

(g) Conclusion

In conclusion, the limitation is compatible with human rights because there is a rational connection between the purpose of reducing graffiti by minors and the restriction, the purpose is both legitimate and important, and it is proportionate to the discrimination against persons under the age of 18 years so as to be reasonable and demonstrably justified in a free and democratic society.

Section 12, freedom of movement and clause 7 of the bill

(a) *What is the nature of the right being limited?*
The ability to move about freely in public spaces in Victoria is a right granted to all Victorians and visitors to this state. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) *What is the importance of the purpose of the limitation?*
The purpose of the limitation is to prevent the marking of graffiti on and around Victoria's public transport system. Marking graffiti by way of spray paint on Melbourne's public transport system, particularly on metropolitan trains, is thought to elevate the status of such offenders within their offending community.

(c) *What is the nature and extent of the limitation?*

Clause 7 of the Graffiti Prevention Bill limits the freedom of movement of a person by preventing a person from legally entering upon public transport or on land adjacent to public transport infrastructure while possessing a spray paint can without a lawful excuse. The clause does not forbid the person from entering on this land, it simply makes it a condition that if the person does enter that land and is carrying a spray paint can, the person must have a lawful excuse for carrying that can.

(d) *What is the relationship between the limitation and its purpose?*
There is a close relationship between the limitation and its purpose. That is, the limitation will restrict the legal ability of would-be graffiti offenders from entering the space upon which they wish to mark unlawful graffiti.

(e) *Are there any less restrictive means reasonably available to achieve its purpose?*

The limitation restricts the possession of spray paint on public transport only to those persons who do not have a lawful excuse for that possession. Accordingly, the limitation represents the least restrictive way of preventing the application of unlawful spray paint graffiti on the public transport system.

(f) *Are there any other relevant factors?*

There are no other relevant factors.

(g) *Conclusion*

In conclusion, the limitation is compatible with the charter because, even though it limits human rights, those limitations are reasonable and proportionate.

Section 12, freedom of movement and clauses 12 and 13 of the bill

(a) *What is the nature of the right being limited?*
The ability to move about freely in public spaces in Victoria is a right granted to all Victorians and visitors to this state. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) *What is the importance of the purpose of the limitation?*
The purpose of the limitation is to enable the investigation of the commission of an offence under the Graffiti Prevention Bill, which is of crucial importance in achieving its objects.

(c) *What is the nature and extent of the limitation?*

Clauses 12 and 13 of the Graffiti Prevention Bill allow a person to be searched for evidence that indicates that a breach of the bill has occurred or is occurring. A person's freedom of movement is limited during such a search because the person is unable to walk away from it. However, the bill states that such searches must be carried out quickly and, as a consequence, the limitation on freedom of movement will be of a very temporary nature.

(d) *What is the relationship between the limitation and its purpose?*
The limitation is necessary to ensure that evidence of the commission of an offence under the bill is taking place or has taken place. Presenting graffiti offenders is a central object of the bill and, without the ability to gather such evidence, no convictions could be obtained.

(e) *Are there any less restrictive means reasonably available to achieve its purpose?*

There is no other way in which, for instance, a spray paint can could be uncovered in the possession of a person who is hiding one in his or her clothing or bag in the absence of such a search, which, by its nature, must limit the ability of the person to move freely about for a short time.

(f) *Are there any other relevant factors?*

There are no other relevant factors.

(g) *Conclusion*

In conclusion, the limitation is compatible with human rights because there is a need for certain persons to be searched in order to give effect to one of the central objects of the bill and the temporary limitation is justifiable in the circumstances.

Section 25 of the Charter, rights in criminal proceedings and clause 7 of the Graffiti Prevention Bill

(a) *What is the nature of the right being limited?*

The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) *What is the importance of the purpose of the limitation?*

The purpose of the limitation is to assist the prosecution in securing convictions of graffiti offenders because relevant and adequate evidence is ordinarily very difficult to obtain and consequently convictions are difficult to secure.

(c) *What is the nature and extent of the limitation?*

The effect of clause 7 of the Graffiti Prevention Bill is that where a person is caught carrying a spray paint can in defined geographic areas the person will have the evidential burden of showing that he or she had a lawful reason for doing so. This means that, to avoid conviction, the accused will be required to point to evidence that they have a lawful excuse for being in possession of the graffiti implement. However, it will remain up to the prosecution to prove all the elements of the offence.

(d) *What is the relationship between the limitation and its purpose?*

The imposition of an evidential burden with respect to establishing a lawful excuse will assist the prosecution to secure convictions. There is a direct relationship between the limitation and its purpose.

(e) *Are there any less restrictive means reasonably available to achieve its purpose?*

There are no less restrictive means reasonably available to secure convictions against offenders who apply graffiti to Victoria's public transport system and infrastructure. In any event, the clause must be structured in this way as the evidence of the law full excuse will be in the possession of the person and not in the possession of the police or the prosecution. Accordingly, that evidence can only come from that person.

(f) *Are there any other relevant factors?*

There are no other relevant factors.

(g) *Conclusion*

In conclusion, the limitation is compatible with the charter because, even though it limits human rights, those limitations are reasonable and proportionate.

Section 25 of the Charter, rights in criminal proceedings and clause 9 of the Graffiti Prevention Bill

(a) *What is the nature of the right being limited?*

The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. However, that right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) *What is the importance of the purpose of the limitation?*

The purpose of the limitation is to secure prosecutions of offenders under clause 9 of the bill. It is important that persons who breach the clause should be brought to justice as a warning to others who similarly set out to encourage and profit from illegal behaviour.

(c) *What is the nature and extent of the limitation?*

Clause 9 of the Graffiti Prevention Bill creates an offence with two elements. The prosecution must prove the existence of both elements for it to secure a conviction. The first element is that the person advertised for sale a prescribed graffiti implement that is likely to incite or promote unlawful graffiti. The second element is that the person intended the advertisement to incite or promote unlawful graffiti.

Clause 9(c) provides that evidence that the advertisement was placed in a publication, including on an internet site, that itself contains messages that incite or promote unlawful graffiti, is proof that the advertisement is likely to incite or promote unlawful graffiti in the absence of evidence to the contrary. If the accused offers evidence that the advertisement is not likely to incite or promote unlawful graffiti, it will be up to the prosecution to prove beyond reasonable doubt that it does incite or promote unlawful graffiti. Accordingly, the nature and extent of the limitation of the right is confined.

(d) *What is the relationship between the limitation and its purpose?*

The imposition of an evidential burden with respect to demonstrating that the publication does not incite or promote unlawful graffiti will assist in securing convictions. The limitation is directly related and proportionate to its purpose.

(e) *Are there any less restrictive means reasonably available to achieve its purpose?*

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

(f) *Are there any other relevant factors?*

Clause 9 has been drafted so that it will impact solely upon businesses that profit from selling materials used to undertake illegal activity and will not apply to persons and organisations who sell spray paint cans to persons who use the product for legitimate purposes.

(g) *Conclusion*

In conclusion, the limitation is compatible with human rights because it is important that persons who seek to encourage and profit from, illegal behaviour are brought to justice as a warning to others.

Conclusion

I consider that the graffiti bill is compatible with the human rights charter because, even though it does limit human rights, those limitations are reasonable and proportionate.

BOB CAMERON, MP
Minister for Police and Emergency Services

Second reading

MR CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

As part of its commitment to tackling graffiti in Victoria, the government is introducing the Graffiti Prevention Bill. The bill will establish a legislative framework that will underpin graffiti prevention and removal. The new legislation will raise awareness that graffiti is a serious criminal offence and provide a clear deterrent to graffiti vandals.

The bill:

