



Submission

Of the

New Zealand Retailers Association

To the

Law and Order Select Committee

In respect of the

**The Summary Offences (Tagging and Graffiti
Vandalism) Amendment Bill**

March 2008

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Introduction

These submissions are presented by the New Zealand Retailers Association

Background

The Association is the largest trade association representing the retail industry in New Zealand.

Our membership includes the major supermarkets and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators spread throughout the country.

We also act as the Secretariat for a variety of trade groups including plumbing materials suppliers, metal fastener distributors, pet shops, jewellers, equestrian and sports goods dealers and bicycle retailers.

Viewed statistically we represent an industry that has annual sales of over \$60b per annum and which employs some 325,000 people (17% of the workforce) in some 49,000 outlets spread throughout the country.

General submission

The Association is supportive in principle of the Governments Stop Tagging our Place (STOP) Strategy and our submissions are generally speaking in line with the views expressed in our February 2006 submission on the Manukau City Council (Control of Graffiti) Bill. However, we have taken the opportunity to seek the views of a cross section of our membership involved in the sale of spray paint cans and a summary of these views are expressed as appropriate in various parts of the submission (and a summary of some of the questions within that survey are appended at the end of this submission).

Specific submissions

Part One – Graffiti Vandalism

We are supportive of the proposals contained in Part one of the Bill which are designed to create a specific offence for graffiti vandalism, tagging and defacing and to introduce a fine of up to \$2000 for such offences.

Retail premises are often the target of graffiti vandalism, and premises located within heavily graffiti vandalised areas can be impacted by a reduction in shoppers visiting an area due to the unattractiveness, and general associations with safety risk that are perceived by the public. However, Part Two of the Bill may assist in mitigating the issue, but is only one part of a multi-pronged approach and there is a far deeper social intervention required.

Part Two - Spray cans

Part Two – reference to Spray Cans. We would like to point out that the title and reference to spraycans throughout this section does not differentiate between spraycans per se and spray paint cans, until the definition under the Serious Drug Offence is referenced. As we don't believe the intent of the Bill is to limit the sale of all spraycan products to under 18 year olds (including hairsprays, deodorants etc) we recommend that the Bill is amended up front to be quite clear in defining the product "Spray Paint Cans" with the definition

"means a container (made of any material or materials) that—

"(a) contains paint, dye, ink, or some other pigment; and

"(b) is so designed that the pigment it contains can be propelled

from it (whether by a compressed or liquefied gas, or by mechanical means)".

We are supportive of the proposal to prohibit the sale of **spray paint cans** to people under 18 years of age and for the introduction of a fine for up to \$1500 for persons who undertake the supply of such cans.

However, there are some impracticalities in implementation of some of the proposals within Part Two which we wish to highlight to the committee, in particular:

- We have reservations about the proposal which requires occupiers of shops to keep spray paint cans secured so that members of the public are unable to obtain possession of them without the help of the shopkeeper and introduces a fine of up to \$1500 for shopkeepers who fail to meet the proposed regulatory requirements.
- We also seriously question the adequacy of a proposed three month lead-time for the enactment of such a statutory requirement.

We note that in the regulatory statement to the Bill that a comment is made to the effect that it is not expected there will be significant compliance costs for retailers who sell spray paint cans. However, it is then stated that there will be an initial compliance cost to retailers who currently store spray paint cans in publicly accessible areas of their premises.

Our survey responses indicate that there will in fact be significant costs to retailers should this part of the Bill proceed. Costs to comply with this proposal have been estimated by our survey respondents to be between \$2,000 and \$5,000 per storage cabinet. One national chain has estimated the costs to fit out their entire chain to be over \$530,000. A retailer would need to sell a significant quantity of spray cans to recover this cost and a number of respondents would simply need to reconsider the viability of selling the product in future.

Also in regards to compliance, the following may not have been considered. If an offence is committed by selling of a spray paint can to a person under 18 years of age, the Bill as drafted places the onus onto the defendant (or the retailer) to prove, for example where sales to a student who met the criteria under 14A(3), that the sale was legitimate. Working this through logically, if a student who is under 18 years of age shows up at their local hardware or art supply store to purchase a spray paint can to

undertake a school project they will require a letter signed by the school authorising permission of the said student to make the purchase. We assume the student will be required to produce their student id to validate they are purchasing for themselves. Are we expecting the retailer keep copies of this letter and student id on file in the event that the retailer may risk prosecution at a later point and require this proof to avoid prosecution? We are now also introducing an administrative compliance cost into the mix.

Further, we do not (based on our survey responses) support the introduction of a fine of \$1500 for retailers that do not comply with the proposed secured storage. We would like to point out that at present some retailers have already voluntarily undertaken to store spray paint cans in lock up facilities in a certain number of their stores. We also understand that collective action has been taken by retailers in certain areas of the country such as Porirua where eight retailers have taken steps to ensure that their displays of spray paint cans are easily visible from sale counters, that their staff are trained to deal with instances of theft of paint cans and that the sale of spray paint cans is voluntarily restricted to people over 18 years of age. We do not believe that legislation and penalties are required to the extent proposed in this Bill.

Our survey also highlighted the fact that a three month lead-time for retailers to make such adjustments within their store is totally impractical (eg. It is likely that cabinets will need to be custom made to meet individual specifications and this will place real pressure on shopfitters whose services are already in high demand; other stock may need to be relocated to accommodate new location of such cabinets and while this may be a more manageable project for a single store, multiple-store owners and national chains will require a greater implementation time – some may be up to 12 months to implement nationally) and that a lead-time of **at least six months** is required to ensure most retailers can meet the requirements of the proposed legislation, however **twelve months is preferred**.

We are pleased to see that the Bill embraces not only sales of spray paint cans by bricks and mortar retailers but also sales at an auction mart or in a market situation. However, we have concerns that sales through websites such as Trade Me are not specifically addressed by the legislation. We would expect that as with alcohol and tobacco, spray paint cans would be similarly banned for sale through this channel as there is no ability to control the age of the purchaser. We acknowledge that the selling of merchandise online is a much wider issue than just for spray paint cans but we consider the Government needs to institute a review of the laws governing online selling and recommend the Committee make a recommendation to this effect on the reporting back of the current Bill.

Conclusion

We are supportive in principle of the Bill but recommend that Part Two not proceed until the issues traversed in this submission are discussed in more detail with the industry.

We wish to appear in support of our submissions

New Zealand Retailers Association
March 2008

Appendix 1

NZRA Spray Paint Can Survey – March 2008

Summary of responses to a selection of our survey questions

	Yes	No
Do you support a Government national strategy to reduce problems associated with graffiti?	91%	9%
Do you support Government proposals to ban the sale of spray paint cans to individuals under 18 years of age?	73%	27%
Do you support Government proposals to introduce fines of up to \$1500 to persons who supply spray paint cans to individuals under 18 years of age?	63%	37%
Do you support Government plans to require retailers to keep spray paint cans in secured areas so that people cannot access such cans without the help of shop staff?	54%	46%
Do you support a government plan to introduce fines of up to \$1500 for retailers that fail to meet the proposed statutory requirements relating to holding spray paint cans in a secured area?	44%	56%