



GRAFFITI LAWS (as of September 2010)

GRAFFITI OFFENCES

MARKING GRAFFITI¹

You **CANNOT** graffiti on property visible in public places unless you have property owner's permission. This includes writing, drawing, scratching or anything that can't be removed with a dry cloth.

Penalty: maximum 2 years imprisonment (or a fine up to \$28,668)

OFFENSIVE GRAFFITI²

Even with permission of an owner you **CANNOT** graffiti on property visible in public places if it would be seen as offensive by a reasonable person.

Penalty: maximum 2 years imprisonment (or a fine up to \$28,668)

POSSESSING A 'PRESCRIBED GRAFFITI IMPLEMENT'³

You CAN be charged with this offence if:

- You have a spray paint can on you or in your belongings &
- You are on or near the property of a transport company or trespassing.

It's no excuse that you weren't going to graffiti. You may have a defence to this charge if you can prove that you had the gear on you because you needed it for a job or trade.

Penalty: On-the-spot fine of \$550 or more **OR** a maximum fine of 25 penalty points (\$2,986)

POSSESSING A GRAFFITI IMPLEMENT WITH INTENT TO MARK GRAFFITI⁴

You can be found guilty of this charge if:

- You've got something on you that can be used to do graffiti; and
- The Police can provide that you *intended* to do graffiti (they might rely on evidence like that you had paint stains on your hands or rubber gloves in your bag etc).

Penalty: maximum 25 penalty units (\$2986)

SELLING SPRAY PAINT CANS

A person **MUST NOT** sell an aerosol paint container to a person less than 18 years of age unless the young person provides a statutory declaration from an employer that it is needed for employment purposes.

SEARCH POWERS OF POLICE/ TRANSIT POLICE (without warrant)

Police have expanded powers to search anyone 14 or over for graffiti implements.

Search on suspicion

Police can only search you if they have a reasonable suspicion⁵ that you have committed or are about to commit a graffiti offence. Example: You are at a skate park and you have paint on your fingers and there is wet graffiti nearby.

¹ Section 5 Graffiti Prevention Act (2007) Vic

² Section 6. above

³ Section 7. above

⁴ Section 8. above

⁵ The fact that a person is present in or near-

(a) a location with a high incidence of graffiti; or

(b) a location that appears to have been recently marked with graffiti-

may be taken into account in determining whether there are reasonable grounds

Where Police have a reasonable suspicion, they **can**:

- Inspect your bag
- Ask you to remove a coat, hat and shoes
- Do a 'pat down' search

You will need to give your name and address

When searching, police must **identify themselves**.

- Police must first inform you of their name, rank and what station they are from. You can ask for this info in writing.
- Police must also show you their ID.

When searching, if they think you are using the spray paint can for CHROMING they are required to stop the search and assist you.

Police who conduct a search MUST make a WRITTEN RECORD of the search containing:

- the member's name, rank and station
- date of search
- the time of search
- the place where the search took place
- name of person searched
- grounds relied on for conducting the search
- a description of any item seized

You MAY request a copy of the report. This is free if requested within 1 year of the search.

SEIZURE POWERS OF AUTHORISED TRANSPORT OFFICERS

Most authorised officer or ticket inspectors do not have the power to seize graffiti implements. Police or transit police do.

A small number of specially trained "authorised transport" officers from the Asset Protection Unit of Metro Trains have the power to seize graffiti implements from you using **reasonable force** if necessary. Use of force cannot be "excessive".

The officer can't seize the item unless:

- the implement is at least partially visible
- the officer tells you why they believe on reasonable grounds that you have or will use the implement to graffiti .
- ask you to hand over the implement, and
- inform you of their power to seize.

The officer DOES NOT have a power to search you & can't seize an item that is not at least partially visible.

For more information

- for information by phone or email, contact Youthlaw on 9611 2412, info@youthlaw.asn.au
- if you are a young person under 25 years , drop in and see us at Youthlaw for some free legal advice, Monday to Friday, 2pm to 5pm, 19 King Street, Melbourne, 3000, or
- for a copy of the laws <http://www.justice.vic.gov.au/graffiti>

**You might want to look at our fact sheets on fines at www.youthlaw.asn.au
If you can't pay the fine you may have to go to court where you will get a criminal record.
If you can't pay your fines, come and see us or go to your local community legal centre.**

You are welcome to copy and use this FACT sheet.