

## GRAFFITI LAWS

This fact sheet details graffiti laws and related search powers in Victoria as at **August 2012**.

### GRAFFITI CRIMES

***Tough graffiti laws in Victoria give police and Protective Services Officers (PSOs) special powers to search, arrest, fine or charge you. Penalties range from on-the-spot fines to imprisonment.***

#### 1. Marking graffiti

Graffiti is writing, drawing, marking, scratching or defacing property in a way that cannot be removed by a dry cloth. Graffiti is a crime if it is done on property without permission from the owner.

#### 2. Criminal damage or wilful damage

Alternatively, police may charge you with criminal damage or wilful damage for marking graffiti.

#### 3. Marking offensive graffiti

Marking offensive graffiti is a crime, whether or not you have permission from the owner of the property. 'Offensive' means it would offend a reasonable person and it is not reasonable political comment.

#### 4. Carrying a spray can

It is illegal to carry a spray can in certain places.

You can be fined or charged if police or PSOs find you carrying a spray can while you are either:

- on public transport property
- in a public place that is next to public transport property
- trespassing on private property

It is an offence to carry a spray can in those situations, even if you had no intention of marking graffiti.

It is a defence if you carry a spray can on public transport for your trade or employment. It is not a defence if you carry a spray can for other reasons, such as education, training or a recreational art program.

If you are caught carrying a spray can in those areas you may be issued an on-the-spot fine of around \$700 or you may be charged in court.

#### 5. Carrying a graffiti implement with an intention to graffiti

The police can charge you in court if you are carrying any type of graffiti implement and you intend to mark graffiti.

A graffiti implement is anything that can be used to mark graffiti including spray cans, textas, markers, stickers or any tool for scratching.

The police need evidence to prove you have an intention to graffiti. Things like paint stains on your fingers or being in an area with fresh graffiti can be enough for the police to prove intent.

### SEARCH POWERS

#### ***Can I be searched for graffiti tools?***

The police and PSOs can search you on the spot for graffiti implements if you are 14 years old and over.

A police officer or a PSO can search you if he/she has reasonable grounds to suspect you are carrying a graffiti implement. This might be because you are in a place marked with fresh graffiti or where there is lots of graffiti around.

Unlike police, PSOs can only search you if you are in or near a train station e.g. in the train station car park, a bus or taxi rank outside the station or a road that leads to the station.

### ☞ **What do I do if police or PSOs stop me?**

Generally, you **must** give your name and address to the police or a PSO if you are asked.

You have a right to ask police or PSOs for their name, rank and station if they stop you and ask for your details.

You also have the right to ask for a **written record** if you are searched.

### ☞ **What kind of search can they do?**

Before a police officer or a PSO can start to search you, they must show you their badge or ID, tell you their name, rank and station and ask you to hand over any graffiti tools.

If you are over 14 but under 18 years of age, police and PSO searches are limited to

- inspecting your bag or anything you are carrying;
- asking you to remove your outer clothing, e.g. your coat and hat, gloves and shoes
- doing a 'pat down' search

If you are over 18, police and PSOs must conduct searches as quickly as possible and in a way that respects your privacy.

Police and PSOs may confiscate any graffiti tools they find during their search.

### ☞ **Can a ticket inspector stop and search me for graffiti tools?**

A ticket inspector (Authorised Officer) can ask you for your name and address if they reasonably suspect you have committed or you are about to commit a graffiti or transport-related offence.

A ticket inspector **cannot** search you or your bags for graffiti tools. However, if graffiti tools are visible (e.g. in your hand or sticking out of your bag or pocket) a ticket inspector can ask you to hand the graffiti tools over. If you do not, they can use reasonable force to take the items from you.

### **Youthlaw**

If you are under 25, you can get free and confidential legal advice.

For more information or to speak to a lawyer:

☎: (03) 9611 2412 (9am-5pm, Mon-Fri)

🌐: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

### **Victoria Legal Aid - Legal Help**

For legal information, referrals or appointments.

☎: (03) 9269 0120

1800 677 402 (country callers)

🌐: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)