Street Art

The term ‘public art’ can cover a range of artworks across any number of different mediums. Such works can vary in scale, degree of permanency and how they fit in with their surroundings.

This information sheet is about the legal issues that can arise in relation to permanent or temporary artistic works, in or visible from public spaces. It is not about artworks held in private spaces or the collections of galleries and museums.

Authorised vs unauthorised public art

The first thing to consider when dealing with public art is whether the work was created with (authorised) or without the permission (unauthorised) of the property owner or local council.

Street artists often start out by creating unauthorised works on property visible to the public, such as walls, buildings, fences and footpaths. After developing their techniques and reputation, some artists move on to creating commissioned (or authorised) pieces for property owners, private business or government organisations. There are unique legal issues which both artists and property owners should be aware of when dealing with street art and these are discussed in more detail below.

Artists or property owners that are involved in creating a commissioned (or authorised) street artwork can find out more information on the commissioning process from Arts Law’s ‘Public Art – Design and Commissioning’ information sheet (https://www.artslaw.com.au/information-sheet/public-art-design-and-commissioning/).

Whether a piece is authorised or unauthorised can have indirect consequences. For example, obtaining permission or authorisation for an artwork may make it eligible for awards. The Street Art Awards are one of the most prominent art awards for street art in Australia. Their website states they are open to, “*Outdoor art that is **sanctioned (legal) art** and publicly visible from or in a street, laneway, park or other public or publicly-accessible space.*” See (https://www.streetartawards.com.au/copy-of-home)

Legal consequences

Artists involved in creating street art should be mindful that carrying out their artistic practice could have legal consequences, including criminal charges. This is particularly the case where the artist has not obtained permission or authorisation from the relevant property owner.

Obtaining permission for an artwork will reduce the risk of legal consequences, but this is not always practical. Some local councils have programs to help artists locate building owners willing to host artwork. For example, the ‘Perfect Match’ program by Inner West Council in Sydney, NSW: https://www.innerwest.nsw.gov.au/live/living-arts/arts-and-cultural-programs/perfect-match. Check with your local council to see if they have a similar program in place.

Trespass

An artist may need to access land owned by someone else to find a suitable location for their artwork. If the artist does not have the landowner’s permission to enter, they could face consequences from both the landowner and the police.

The artist could be charged by police with a criminal offence for trespassing on land without the landowner’s permission. The consequences of being charged by police for trespassing could include a fine, community service order or even imprisonment.

The property owner could also make a civil claim against the artist for trespassing. The civil wrong of trespassing occurs when a person:

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- directly and intentionally enters or remains on land, or
- causes some object to come into contact with land, which is possessed by someone else.

If the trespass is continuing, (e.g. paint remains there) this could result in repeated actions in trespass. If successful, the property owner could get a court order requiring the artist to pay them 'damages' to compensate them, even if there wasn't much damage to the property.

It's unlikely that the usual defences to trespass such as implied licence, consent, necessity, self-defence or legal authority will apply to a street artist. Street artists should carefully consider whether or not they may be trespassing on another person's property when choosing a site for their artwork.

Graffiti related crimes

Most Australian States and Territories have legislation which regulates graffiti and related activities. These laws don't differentiate between a hastily scrawled tag and an elaborate street art mural, and may even apply to authorised street art completed with the consent of the property owner. So, it's important for street artists to know the law where they are placing their street art.

Generally speaking, it's a crime for an artist to create a public artwork that marks someone else's property, without first obtaining the permission of the property owner or occupier. It may also be a crime for a person to be in possession of a 'graffiti implement', such as spray paint or paint markers, if there is an intention to mark property. In Victoria, it is also illegal to possess a graffiti implement on public transport, in certain public places or when trespassing.

The repercussions for these crimes can include hefty fines, going to prison or a community service order (e.g. cleaning up your own graffiti). Some graffiti related crimes can also have consequences for a person's right to hold a driver's licence or learner's permit.

Below is a summary of the various laws in each of the different States and Territories. You can find more detailed information for each State further below. This is only a summary and you should always seek legal advice that is specific to your situation.

	ACT	NSW	NT	QLD	TAS	VIC	WA
Illegal to mark property or apply graffiti without consent of property owner	?	?	?	?	?	?	?
Illegal to mark property or apply graffiti even if property owner gives consent	X	X	X	X	X	?*	X
Illegal to possess a graffiti implement with intent to apply graffiti	X	?	?	?	?	?	?
Illegal to possess graffiti implement in certain places without valid excuse	X	X	?	X	?	?	X
Offenders can be ordered to remove graffiti	X	?	X	?	?	X	?
Offenders can be ordered to forfeit a device used to photograph or record graffiti	X	X	X	?	X	X	?
Police can search person suspected to be in possession of graffiti implement without warrant.	X	X	?**	?	?	?	X

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Local council may remove graffiti with consent of property owner	?	?	?	?	?	?	?
Local council may remove graffiti without consent of property owner in certain circumstances	X	?	X	?	X	X	?

* If the graffiti is offensive and visible from public then it will be an offence regardless of whether the property owner provided their consent.

** Police can only search a person if the circumstances are urgent and serious enough to require an urgent search.

Australian Capital Territory

The Australian Capital Territory does not have any specific graffiti related legislation. Instead, graffiti is covered by existing laws about damage or destruction of property.

In the ACT it is an offence to intentionally or recklessly:

- destroy or
- cause damage to

property that belongs to someone else.

If the damage is less than $5,000, under the *Crimes Act 1900* (ACT) the maximum penalty is a fine of $8,000 or 2 years' imprisonment, or both. If the damage is more than $5,000, then under the *Criminal Code 2002* (ACT) the maximum penalty increases to a fine of $160,000 or 10 years' imprisonment, or both.

New South Wales

In New South Wales, under the *Graffiti Control Act 2008* (NSW) it is an offence to intentionally mark property without:

- a reasonable excuse or
- the permission of the occupier or owner of the property.

The maximum penalty is a fine up to $440.

However, if:

- the person used a graffiti implement or
- the graffiti can't be easily removed with soap and water,

then the maximum penalty increases to 12 months' imprisonment or a fine up to $2,200.

A person can't be sent to jail for a graffiti offence unless they have already been convicted of either

- a graffiti offence or
- possessing a graffiti implement, and
- the court decides they are likely to be a repeat offender.

It is also an offence to have a graffiti implement in your possession with the intention of using it for graffiti. This has a maximum penalty of 6 months' imprisonment or a fine up to $1,100. A person can't be sent to jail for possessing a graffiti

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implement unless they have already been convicted of:

- possessing a graffiti implement or
- a graffiti offence, and
- they are considered to be a repeat offender.

A person who has been fined for a graffiti offence may have to perform community clean-up work, such as removing graffiti, to satisfy the fine. They will usually also need to participate in a graffiti prevention program, aimed at preventing offenders from re-engaging in graffiti activities. In addition to any fines for a graffiti offence, a court might also order the person to pay up to $2,200 towards the cost of repairing or restoring the damage.

A court can also make orders that affect a person's driver's licence if they are found guilty of a graffiti offence and fined. If the person holds a learner or provisional licence, the court can extend the learner/provisional period. If the person holds a full licence, the court can reduce the number of demerit points the offender can have before their licence is suspended.

Northern Territory

The Northern Territory doesn't have any specific graffiti or street art legislation. Instead, graffiti is covered by existing laws about damage or destruction of property or by council by-laws.

Under the *Criminal Code Act 1983* (NT), it is an offence to intentionally or recklessly cause damage to property belonging to another person. This has a maximum penalty of up to 14 years imprisonment. This could include damaging the property by applying graffiti or street art. A person will not be liable, however, if they first obtained the consent of the property owner.

It may also be illegal to possess certain graffiti implements (such as spray paint or marker pens) if you intend to use them to graffiti another person's property without their consent. While there is no law that specifically covers the possession of graffiti implements, you could be charged with the more general offence of possessing a thing to be used to damage another person's property. The maximum penalty for this is 2 years' imprisonment.

Under the *Public Transport (Passenger Safety) Act 2008* (NT), it is an offence to graffiti a:

- bus
- bus station or
- bus stop or
- any signs or equipment at a bus station or bus stop.

You could be fined up to $3,140.

There are no specific laws that allow the police to search you for graffiti implements, however you may be searched under the *Police Administration Act 1978* (NT) without a warrant, if the circumstances are serious and urgent enough to require an immediate search.

Some local councils have enacted by-laws to regulate graffiti. For example, in the City of Palmerston it is an offence to write on, deface or mark a:

- power pole
- sign
- post
- fixture or

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- wall

without a permit. The penalty for this is a fine up to $3,000.

Queensland

In Queensland it is an offence under the *Criminal Code Act 1899* (Qld) to spray, write, draw, mark, scratch, etch or apply paint (i.e. graffiti) to:

- public property or
- property that is visible from a public place.

This has a maximum penalty of up to 7 years' imprisonment. Courts can also order an offender to:

- perform community service, including ordering them to remove graffiti
- pay compensation to the property owner
- forfeit anything that was used to record, store or transmit an image of the graffiti, such as a mobile phone.

It is also an offence under the *Summary Offences Act 2005* (Qld) to be in possession of a graffiti instrument, such as spray paint or an etching instrument, that is reasonably suspected of having been, or about to be, used for graffiti. Possible sentences include up to 1 year's imprisonment or a fine up to $2,757, and the court can also make a community service or compensation order.

Queensland also has a 'graffiti removal program' to try and deter young people from committing graffiti related offences. Under the *Police Powers and Responsibilities Act 2000* (Qld), if someone between the ages of 12 and 18 admits to the police that they committed a graffiti offence, they may be given the chance to attend a graffiti removal program instead of going to court. If they choose to enter the program, they will have to complete a certain number of hours of graffiti removal work based on their age.

Police can search a person without a warrant if they suspect that the person is in possession of evidence of a graffiti offence. A person who is arrested for possessing a graffiti implement must be given a reasonable opportunity to provide an explanation for why they are in possession of it.

Tasmania

Under the *Police Offences Act 1935* (Tas) it is an offence to mark, draw, write or otherwise deface property:

- in a way that isn't readily removable by wiping with a dry cloth (i.e. graffiti)
- without a lawful excuse.

A lawful excuse could include:

- having permission from the property owner
- the graffiti being done as part of your occupation or
- it is part of a lawful recreational activity.

The maximum penalty is a fine up to $3,460. A court can also impose a community service order (including for the removal of graffiti).

It is also an offence to:

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- possess
- carry or
- use

graffiti equipment, including:

- spray paint
- permanent markers
- chalk or
- anything that can be used for etching or scribing,

without a lawful excuse in a public place. You could be fined up to $3,460 for this. The same lawful excuses set out above will apply to possession of graffiti equipment.

Police officers can also stop, detain and search a person and their vehicle, without a warrant, if they believe the person is carrying graffiti equipment.

Victoria

In Victoria, under the *Graffiti Prevention Act 2007* (Vic) it is an offence to write, draw, mark, scratch or deface property:

- in a way that isn't readily removable by wiping with a dry cloth (graffiti)
- that is visible from a public place
- without first obtaining the consent of the property owner.

It is also an offence to create offensive graffiti, even it the property owner consented to it, unless the graffiti is political comment. The maximum penalty for both these offences is 2 years imprisonment or a fine up to $43,617.60!

It is also an offence to possess a graffiti implement:

- with an intent to use it for graffiti, or
- on public transport,
- in certain public places or
- when trespassing.

The maximum penalty is a fine up to $4,534.50.

Police can also search someone without a warrant if they suspect that the person is in possession of a graffiti implement. A police officer can take into account whether a person is close to a popular graffiti area or an area that has been recently graffitied.

Victorian transport officers can also seize graffiti implements using reasonable force, if they believe that it:

- was used, or
- will be used,

to create graffiti and the graffiti implement is visible before it is seized.

Western Australia

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It is an offence under the *Graffiti Vandalism Act 2016* (WA) to destroy, damage or deface another person's property by:

- drawing, writing or painting on it,
- without their consent.

The maximum penalty is a fine of $24,000 or 2 years' imprisonment, and the minimum penalty is a community based order. A person convicted of a graffiti offence can be ordered to remove the graffiti or to pay for another person to do so.

It is also an offence to possess anything with the intention of using it for graffiti, the maximum penalty is a fine of $6,000.

A court can order a person convicted of:

- a graffiti offence or
- possessing a graffiti implement,

to forfeit anything that was used in or in connection with the offence, including anything used to record or transmit images of the graffiti.

Under the *Public Transport Authority Act 2003* (WA):

- ppublic transport officers can arrest a person suspected of having committed a graffiti offence, and
- repeat offenders can be prohibited from being on public transport or near a public transport facility.

Protecting street art from being copied

While street artists need to be cautious of the legal consequences they may encounter in the course of practising their craft, they also have some legal protections for their artworks. These protections will usually apply regardless of whether or not the artwork is authorised, although they may not prevent a property owner from removing an unauthorised artwork from their property.

Copyright law protections

Street artists can get copyright protection for their art (and any preliminary sketches or drawings) as artistic works. Copyright provides protection where the work is:

- a result of skill and effort;
- original; and
- in a material form that is recorded (e.g. a mural, graffiti, stencils or sketches).

If the above criteria are met, other people can't reproduce, publish or communicate the artistic work without consent. This means that other people will need to get permission from the street artist if they want to:

- photograph the artwork, particularly for commercial purposes;
- feature the work on a website;
- use the location for a film shoot; or
- publish images of the artwork in a book or magazine.

In Australia, copyright automatically applies to an artwork once it has been created. This means that artists do not need to apply for copyright or pay any registration fees to get copyright protection.

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Copyright generally exists in the street art for the lifetime of the artist plus an extra 70 years. Anonymous and pseudonymous works are only protected for 50 years from when they are placed on the street. But if the identity of the artist is known or can be found out, the copyright will be for the life of the artist plus 50 years.

The property owner is not the copyright owner of the art unless this has been agreed with the artist. This means that the property owner can't exploit the intellectual property in the artwork (for example by creating merchandise which features the artwork) unless they have an agreement with the artist that allows them to do so. If a street artwork has been commissioned by the building owner, the commissioning agreement could include the transfer or licence of the copyright, from the artist to the building owner. Arts Law recommends that artists and property owners seek advice before entering into a commissioning agreement. You can find more information about this here: (https://www.artslaw.com.au/information-sheet/public-art-design-and-commissioning/).

A recent and prominent example of copyright being used by a street artist to protect their artworks, involved a clothing line created by the US retail conglomerate Walmart, in collaboration with talk show host Ellen DeGeneres. Street artist Julian Rivera created a distinctive design that featured the word 'love' transformed into a stylised heart, which he used for a number of years to sign off his artworks and on various items of apparel. In early 2019, however, Walmart and DeGeneres released a clothing line featuring a remarkably similar 'love' logo. Rivera claimed that Walmart and DeGeneres had infringed his copyright. The matter was ultimately settled out of court in 2020 for an undisclosed amount.

Copyright notice

Not everyone knows that copyright law protects street art, in the same way as more traditional art forms. This is why street artists should be proactive by adding the copyright notice symbol (©) to their work. Even though it's not a requirement to get copyright protection in Australia, it's a useful way for artists to:

- let the public know that their artwork is protected by copyright and
- warn them that it should not be reproduced without permission.

You should also include your name or pseudonym and the year that the work was created or first published. This can help other people get in touch with you, if they are interested in licensing the artwork.

You might want to specify that taking photos for non-commercial use is allowed. The easiest way to do this is with a Creative Commons Attribution Non-Commercial licence. All you need to do is paint "CC BY-NC" somewhere on the work, near the copyright symbol. This gives anyone wanting to use the artwork for non-commercial purposes permission to do so, so long as they credit you. This protects your moral right to be credited as the creator of the work. It's also as an extra reminder to advertisers and marketers, that they need to ask for permission, if they want to use your artwork for commercial purposes.

Why it's difficult for street artists to enforce their copyright

Even though street artists are usually be entitled to protections under copyright law, enforcing them can unfortunately, be difficult.

An artist may, understandably, be reluctant to come forward and claim copyright ownership of an unauthorised work, as this could expose them to criminal charges or other legal consequences.

Artists may also find it difficult to protect their artwork due to the costs and time associated with bringing a copyright claim.

Enforcement is also problematic where an artist uses a pseudonym or alias to protect their identity. To file a claim for copyright infringement, an artist will need to use their legal name on the court documents. This information then becomes publicly available and could be reported by journalists.

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The public nature of street art also makes it difficult for artists to prevent an artwork from being used or exploited. Even though most street artists are happy to allow certain kinds of exploitation (e.g. members of the public taking pictures of their work) they may wish to control other forms of exploitation (e.g. businesses exploiting street artwork for marketing purposes). Unlike an artwork in a gallery or private collection, it is almost impossible to control access to street artwork, and to permit one type of exploitation but restrict another.

Street artists can miss out on compensation that they would otherwise be entitled to, if those same businesses tried to use a less public art form. For example, the work of New Zealand street artist, Xoë Hall, was used by businesses without her permission, and without any compensation for calendars and rental car advertisements. See the article 'Yes, street art is on public display – but that doesn't mean we should share it without credit' published by *The Conversation.*

A copyright collecting society might be able to assist street artists with licensing or managing the use of their artworks. These not-for-profit organisations can also collect licensing fees on behalf of artists. In Australia, the Copyright Agency licenses the works of Australian visual artists. You can find out more from their website: www.copyright.com.au.

Public sculptures not protected by copyright

Street artists that create public sculptures or works of artistic craftsmanship (e.g. ceramics, wood, metal and glass works) miss out on protection by copyright laws. Australian copyright law contains a specific exemption for public sculptures, which allows the public to photograph sculptures in public places such as parks. The exemption allows such works to be included in film or television broadcasts.

This exemption covers both authorised and unauthorised street art sculptures that are permanently on display in public. The artists that created them can't control the exploitation of their work.

Copyright doesn't prevent destruction

Copyright is unlikely to assist a street artist when it comes to preserving or protecting their artwork from removal or destruction. None of the rights in relation to copyrighted works relate to the preservation of the work. This is because the copyright in a work is separate from ownership of the physical object on which the work is embodied. Instead, artists need to rely on another bundle of rights referred to as 'moral rights'.

Removal of street art

One of the most common issues for street artists is the destruction or defacement of their works. It might seem contradictory to try and preserve an artform which some consider to be transitory or destructive. But many street artists have found allies in building owners and local councils that recognise the artistic value of street art and wish to preserve it.

Protecting street art from destruction or defacement is difficult because of its defining feature – its public nature means that it is practically impossible to protect an artwork from being defaced or removed. The risk of defacement comes from other artists, taggers, property owners and governments.

While obtaining the permission or consent of the property owner might reduce the risk of its removal, this doesn't protect it from other artists, the local council or state government. Prominent Australian graffiti artist Scottie Marsh has had some of his satirical street art murals removed, even when the building owner consented to the mural. One of the more notable examples was a work in Sydney of a burning police car, which was apparently removed by the City of Sydney Council at the request of NSW Police, despite Marsh having obtaining authorisation from the building owner. See the article 'Artist claims NSW Police behind request to have his mural of a burning police car painted over' by Ahmed Yussuf, published by *SBS News* at: https://www.sbs.com.au/news/the-feed/artist-claims-nsw-police-behind-request-to-have-his-mural-of-a-burning-police-car-painted-over.

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Some states have legislation which allows local councils to remove graffiti from public places and, in some circumstances, from private property. Some of these laws even allow for the removal of artworks that were created with the permission of the property owner. You can find out more about these laws below.

Moral rights – protecting street art from being destroyed

In addition to owning the copyright in their work, a street artist will also have moral rights, being the:

- right of attribution of authorship;
- right not to falsely attribute the work to someone else; and
- right of integrity of authorship of the work.

The right of integrity of authorship includes the right not to have the artist's work subjected to 'derogatory treatment'. This can be anything that results in distortion, destruction, mutilation or alteration of the work, in a way that harms the artist's honour or reputation.

The removal or destruction of a street artwork may be a form of derogatory treatment. This could entitle the artist to bring a legal claim against anyone that tried to remove, alter or destroy their work. If successful, a court could potentially:

- grant an injunction to prevent the work's removal
- order damages be paid to compensate the artist for the loss of the work
- compel the person that removed the work to issue a public apology or
- order that the derogatory treatment of the work be reversed.

Currently Arts Law is not aware of any examples of street artists successfully using their moral rights to protect their artwork. This could be due to a number of issues which make it difficult to bring such a claim.

- **Reasonableness**

First, the party who wants to remove or destroy the street art may argue that it was reasonable to do so. Australian copyright law provides a defence for infringement of an artist's moral rights, where it is reasonable. The success of this defence might depend on whether the work was authorised – it will be easier for a property owner to convince a court that it was reasonable to remove an artwork when it was done:

- without their permission and
- while the artist was trespassing on their land.

Where the work was authorised by the property owner, the reasonableness defence will be less relevant.

- **Legal consequences**

Second, and as mentioned above, a street artist who has created an unauthorised art piece could expose themselves to other legal consequences if they attempt to enforce their moral rights. The prospect of criminal prosecution is likely to deter most street artists from enforcing their rights, even if they have a valid claim.

- **Anonymity**

Third, many street artists choose to work anonymously. This could make it difficult for the artist to prove to a court that their 'honour and reputation' as an artist has been affected by the removal of the work.

- **Temporary nature of street art**

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Fourth, many street artists expect their works to have a limited life span and accept the risk of removal or alteration as part of the art form. Street art and graffiti is almost always more transient and less permanent than more traditional artistic practices, especially where it is unauthorised or illegal. Everyone from property owners to local councils and even other artists may be lining up to alter or remove a particular artwork. This can even contribute to the status and prestige of a particular work. This expectation of temporariness could make it difficult for artists to claim that their 'honour or reputation' has been affected by the removal of a street artwork.

One positive sign for artists comes from a US case involving the internationally renowned street art complex '5Pointz'short for '5Pointz Aerosol Art Center Inc.' These were privately owned unused warehouses in New York City, that were later used as a collaborative street art mural space. 5Pointz became so successful that it was featured in tourism guides and even had its own curator to manage the site. The building owner eventually decided to develop the site and demolish the existing buildings, including the graffiti on them. The artists filed a lawsuit seeking an injunction to prevent the development, relying on, amongst other things, their moral rights in the artworks. In response, the building owner had a team of workers paint over all of the murals with white paint. After a lengthy legal battle, the artists were awarded US$6.75 million for the destruction of their artworks. The court found that street art was deserving of protection and that its temporary nature did not affect this.

While this case does not have any direct legal significance in Australia, it shows that courts are willing to recognise street art as being just as worthy of protection as other more permanent art forms.

Moral rights and building owners

Property owners need to be conscious of an artist's moral rights when dealing with an artwork on their building or property. If a property owner intends to change, relocate or destroy a building which features a street artwork, they should either:

- provide the artist with written notification of their intentions or,
- if they do not know the identity of the artist, make reasonable inquiries to determine the identity and location of the artist.

If this has been done, the building owner will be able to rely on a specific defence under Australian copyright law, which allows them to remove works that are affixed to their building without infringing the moral rights of the artist.

The requirement to provide the artist with notice will be particularly important where a property owner has commissioned or authorised an artwork. This is because it will be difficult for them to claim that they cannot determine the identity of the artist when they have an agreement with the artist to create the work. On the other hand, property owners can often rely on this defence when a street artwork is unauthorised. This is because most street artists generally make use of pseudonyms and try to hide their real identity to avoid criminal prosecution.

This is another reason why it is useful for artists to include their name or pseudonym on their artwork, or even the details of a social media account that they use for their art. Including this information will make it easier for a building owner to contact an artist, and reduces the risk that a building owner can remove an artist's work from their building, without first consulting with the artist.

Graffiti removal laws

Most Australian States and Territories have laws which authorise the removal of 'graffiti'. The removal is often done at the request of the owner of the building or property on which the artwork is located. Some local councils have a specific service for business owners to request the removal of street art or graffiti from their premises.

These laws also often authorise the removal of street art without the consent of the property owner. There are usually certain requirements that the council must meet, like:

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- informing the property owner that the work has occurred and
- bearing the cost of the removal and any damage that is caused.

These laws don't typically take into account the artistic or cultural merit of the piece but sometimes limit removal to obscene or offensive graffiti. Often the only requirement for a council to order the removal of a piece of street art is that it is:

- on public property or
- located in such a way that makes it visible to the public.

This can sometimes result in an elaborate mural created with the authorisation of the building owner being treated the same as a hastily scrawled tag.

See details of the laws of each State and Territory below:

Australian Capital Territory

The ACT does not currently have any specific legislation relating to the removal of graffiti. However, there is a program for property owners to request assistance from their local council to remove graffiti.

New South Wales

Under the *Graffiti Control Act 2008* (NSW) a local council in NSW can remove graffiti either:

- with the agreement of the owner or occupier of the property or,
- if the owner or occupier does not consent, if the work is visible from a public place and the council can remove it from a public place (for example, standing in the street to remove graffiti from a building).

Where the owner does not consent, the council must:

- bear the cost of the removal work and
- give the owner or occupier notice that the graffiti has been removed. This notice can be provided *after* the graffiti is removed.

Northern Territory

The Northern Territory does not currently have any specific legislation relating to the removal of graffiti. However, some local councils (such as the City of Darwin and the City of Palmerston) have programs for property owners to request assistance with graffiti removal. These councils may also compensate property owners for the cost of a graffiti removal kit or any paint used to cover up graffiti on their property.

Queensland

Under the *Summary Offences Act 2005* (Qld) the Queensland government and local councils can appoint 'graffiti removal officers'. These graffiti removal officers can remove graffiti that's:

- in a public place or
- visible from a public place.

If the graffiti is located on private property, the graffiti removal officer must first give the owner notice and obtain their consent to remove the graffiti. However, graffiti removal officers are not required to obtain a property owner's consent if:

- they can remove the graffiti by leaning or reaching into the property from a public place or

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- they are removing graffiti from part of the property that borders a public place, such as a wall or fence.

The graffiti removal officer must take reasonable steps to leave private property in the condition it was in without the graffiti. This can sometimes mean simply painting over the graffiti rather than repainting the entire wall. A property owner can also claim compensation for any damage or loss that is caused by the graffiti removal.

Tasmania

Tasmania does not currently have any specific laws to deal with the removal of graffiti. Local governments are able to remove graffiti from public areas and may also be able to remove it from private property, if they have authorisation from the property owner.

Victoria

Under the *Graffiti Prevention Act 2007* (Vic) a local council has powers to remove graffiti from private property if the graffiti is visible from a public place. If the council needs to enter private property to remove the graffiti, they must first obtain the consent of the property owner. If entry to private property is not necessary, the council can remove the graffiti provided:

- they give notice to the property owner and
- the property owner does not object.

If the owner consents or does not object to the removal, the council can remove any subsequent graffiti that appears on the property in the next 12 months without consulting the owner. If the owner objects to the removal of the graffiti, then the council must not proceed.

Under Victoria's graffiti laws, there is no compensation available to property owners or artists for loss, damage or injury to property, resulting from councils' actions to remove graffiti from private property.

Western Australia

Under the *Graffiti Vandalism Act 2016* (WA) llocal governments can remove any graffiti that:

- is visible from a public place and
- was applied without the consent of the owner or occupier,

even if they do not have the consent of the property owner to remove the graffiti.

A local government can also order a property owner to:

- remove graffiti that is visible from a public place and
- which the local government considers to be 'unsightly or offensive',

even if the property owner consented to the graffiti being applied. If the property owner does not remove the graffiti themselves, the local government can do it and recover the cost from the property owner.

If a local government intends to enter private property to remove graffiti, they must first provide the owner or occupier with notice of their intention to do so.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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