



Australian Capital Territory

Dangerous Substances and Litter (Dumping) Legislation Amendment Act 2009

A2009-1

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Australian Capital Territory

Dangerous Substances and Litter (Dumping) Legislation Amendment Act 2009

A2009-1

An Act to amend laws relating to the dumping of dangerous substances and litter, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Dangerous Substances and Litter (Dumping) Legislation Amendment Act 2009*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Dangerous Substances Act 2004

3 Legislation amended—pt 2

This part amends the *Dangerous Substances Act 2004*.

4 Failure to comply with safety duty—exposing people to substantial risk of death or serious harm Section 43 (1), new example

insert

Example

Peter dumps material that he knows contains asbestos in an ACT park, where rangers regularly patrol. He is reckless about whether this poses a danger to anyone. Peter commits an offence against this section because asbestos is a dangerous substance and, under the general safety duty of everyone involved in handling a dangerous substance, he must take all reasonable steps to minimise the risks resulting from handling the substance (see s 23 and s 41). Handling a dangerous substance includes disposing of the substance (see s 11). Peter has exposed the rangers and others (eg anyone using the park who comes across the material) to a substantial risk of developing an asbestos-related disease.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**5 Failure to comply with safety duty—exposing property or environment to substantial risk of substantial damage
Section 45 (1), new example**

insert

Example

Sarah dumps arsenic in a stormwater drain. She is reckless about whether she is exposing the environment to a substantial risk of contamination. Sarah commits an offence against this section because arsenic is a dangerous substance and, under the general safety duty of everyone involved in handling a dangerous substance, she must take all reasonable steps to minimise the risks resulting from handling the substance (see s 23 and s 41). Handling a dangerous substance includes disposing of the substance (see s 11). Sarah has exposed the ACT's waterways to a substantial risk of contamination.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3 Litter Act 2004

6 Legislation amended—pt 3

This part amends the *Litter Act 2004*.

7 Littering Section 8 (2), note

substitute

Note *Escape* is defined in the dictionary.

8 Section 8 (6)

omit

9 Aggravated littering Section 9, penalty

substitute

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

10 New sections 9A to 9C

insert

9A Dumping litter

- (1) A person commits an offence if—
 - (a) the person intentionally dumps litter at a public place; and
 - (b) either—
 - (i) the volume or weight of litter is more than the amount prescribed by regulation; or

- (ii) the litter is larger than the size prescribed by regulation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
 - (a) the person intentionally dumps litter anywhere; and
 - (b) either—
 - (i) the volume or weight of litter is more than the amount prescribed by regulation; or
 - (ii) the litter is larger than the size prescribed by regulation; and
 - (c) the person is reckless about whether the litter, or part of the litter, escapes, or is likely to escape, into or onto a public place.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) Strict liability applies to subsection (1) (b) and subsection (2) (b).

9B Dumping litter—strict liability

- (1) A person commits an offence if—
 - (a) the person dumps litter at a public place; and
 - (b) either—
 - (i) the volume or weight of litter is more than the amount prescribed by regulation; or
 - (ii) the litter is larger than the size prescribed by regulation.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
 - (a) the person dumps litter; and

- (b) either—
- (i) the volume or weight of litter is more than the amount prescribed by regulation; or
 - (ii) the litter is larger than the size prescribed by regulation; and
- (c) the litter, or part of the litter, escapes, or is likely to escape, into or onto a public place.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

9C Commercial waste

- (1) A person commits an offence if the person deposits commercial waste at a public place.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An occupier of commercial, industrial or business premises commits an offence if the occupier fails to take reasonable steps to prevent litter from the premises being deposited at a public place.

Maximum penalty: 100 penalty units.

11 Section 10 heading

substitute

10 Commercial waste—strict liability

12 Division 4.3 heading

substitute

Division 4.3 Dealing with litter

13 New subdivision 4.3.1 heading

insert

Subdivision 4.3.1 Dealing with litter—removal etc by person

14 Section 21 heading

substitute

21 Notice to remove etc litter

15 Section 21 (4)

substitute

- (4) The notice must contain a statement to the effect that if the litter is not removed or disposed of, or the public place not restored, in accordance with the requirement—
- (a) an authorised person may authorise someone else to remove or dispose of the litter or restore the public place; and
 - (b) the reasonable cost of the removal, disposal or restoration is a debt due to the Territory by the person who is required to comply with the requirement.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

16 Section 22 heading

substitute

22 Authority to remove etc litter when direction not complied with**17 Section 22 (2)**

substitute

- (2) The chief executive may arrange for a person to remove or dispose of the litter, or restore the public place, in relation to which the direction relates.

18 Section 23, except note

substitute

23 Liability for cost of removal etc

A person who fails to comply with a requirement in a notice under section 21 (Notice to remove etc litter) must pay to the Territory the reasonable cost of any removal, disposal or restoration carried out under section 22.

**19 AAT review of notice under section 21
Section 24**

omit

(Notice to remove litter)

substitute

(Notice to remove etc litter)

20 New subdivision 4.3.2

after section 24, insert

Subdivision 4.3.2 Dealing with litter—removal etc by Territory

24A Removal etc of litter—by Territory

- (1) This section applies if an authorised person or police officer believes on reasonable grounds that—
- (a) litter in a public place has been deposited by anyone (the *litterer*) in contravention of this Act; and
 - (b) either or both of the following applies:
 - (i) prompt removal or disposal of the litter is necessary because it could cause injury to a person or animal or damage to property;
 - (ii) the size, shape, nature or volume of the litter means that prompt removal or disposal is in the public interest.

Examples

- 1 A large volume of litter is dumped next to a main road. Prompt removal is in the public interest because the litter smells and is unsightly.
- 2 Access to a walking trail in a nature reserve is blocked by an old spa bath that has been dumped in the reserve. Prompt removal is in the public interest to restore access to the trail.

- 3 A large public building is being extensively renovated. The Territory gives permission for the builder to establish a temporary depot on adjacent public land for rubbish from the building site to be deposited. The depot is fenced. When the renovations are finished, the rubbish is removed and the fence taken down. However, someone dumps rubbish at the site, and soon others also dump rubbish there. Prompt removal is in the public interest because it discourages the dumping of rubbish at the site.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may arrange for a person to do either or both of the following:
- (a) remove or dispose of the litter from the public place;
 - (b) restore the public place affected by the litter to a state as close as practicable to the state it was in immediately before the litter was deposited.
- (3) To remove any doubt, if this section applies, notice need not be given to the litterer under section 21 (Notice to remove etc litter).

24B Recovery of costs associated with removal etc of litter

- (1) If the chief executive arranges for a person to do a thing mentioned in section 24A (2), the litterer must pay to the Territory the reasonable cost of doing the thing.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

- (2) In this section:

litterer—see section 24A (1).

21 Dictionary, new definition of *escape*

insert

escape, into or onto a public place, includes fall, descend and percolate, and be blown or washed, into or onto the place.

Part 4 Magistrates Court (Litter Infringement Notices) Regulation 2004

22 Legislation amended—pt 4

This part amends the *Magistrates Court (Litter Infringement Notices) Regulation 2004*.

23 Litter Act infringement notice offences and penalties Schedule 1, table, new item 4

insert

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 December 2008.

2 Notification

Notified under the Legislation Act on 17 February 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Dangerous Substances and Litter (Dumping) Legislation Amendment Bill 2009, which originated in the Legislative Assembly as the Dangerous Substances and Litter (Dumping) Legislation Amendment Bill 2008 and was passed by the Assembly on 10 February 2009.

Clerk of the Legislative Assembly

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