

Litter (Shopping Trolleys) Amendment Bill 2010

Explanatory Statement

Overview

The Litter (Shopping Trolleys) Amendment Bill 2010 (the Bill) proposes to amend the *Litter Act 2004* (the Act) and the *Magistrates Court (Litter Infringement Notices) Regulation 2004* to create a regime for managing trolleys that are left on public land.

Trolleys on public land are a problem in the ACT. They are a form of litter that is unsafe, unattractive, damaging to the environment, and often a catalyst for further littering or vandalism. The problems become worse the longer a trolley is left in a public place. Managing these trolleys is also costly to the Territory.

Recognising these problems, the Bill encourages retailers to take more responsibility for their trolleys. It introduces penalties (including fines under infringement notices) for retailers who fail to collect a trolley on public land once they've been notified of its location by authorities. Once notified, the retailer has a further 24 hours to remove the trolley. If the trolley remains uncollected, an authorised person may impound the trolley. The retailer can then be issued with a fine.

Once a trolley is impounded, the *Uncollected Goods Act 1996* applies. Retailers are notified and may collect the impounded trolley. They can be liable for the reasonable costs the Territory incurred removing the trolley. An additional amendment under the Bill also requires that any trolleys disposed of under the *Uncollected Goods Act* are recycled. In situations where a trolley in a public place is dangerous, or removal of the trolley by a retailer is impractical, the trolley may be impounded straight away.

The fine for failure to collect a trolley is waived if the retailer operates a 'trolley containment system' at their store. This is intended to encourage retailers to take measures to prevent trolleys leaving their premises in the first place.

The Bill requires retailers to mark trolleys with identification details and a phone number specifying an ACT Government contact. This will assist members of the public to contact the owner, or the Territory, to alert them to the location of a trolley. The identification details also ensure an authorised person collects appropriate evidence about a trolley before issuing removal and infringement notices.

The Bill recognises that retailers with few trolleys could face a disproportionate burden. It therefore allows for the creation of regulations to exempt small retailers from fines for failing to comply with a removal notice.

The Bill also addresses the issue of individuals dumping trolleys. It clarifies that leaving a trolley in a public place is an offence. It allows an authorised person or police officer to give a direction to a person who leaves or intends to leave a trolley in a public place, which requires the person to return the trolley to the retailer. A fine applies if the person fails to follow the direction. This approach recognises that it is commonly individuals at a socio-economic disadvantage who take trolleys from retailers. It seeks to ensure that people understand that leaving trolleys in a public place is an offence. It also facilitates the return of trolleys to their owners.

Notes on Clauses

Strict liability

The Bill contains strict liability offences. These are clearly identified in the Bill and in this explanatory statement. The offences are in line with similar offences already set out in the *Litter Act 2004*. Penalties for the new strict liability offences do not exceed 10 penalty units and do not propose a term of imprisonment.

For the offence of leaving a trolley in a public place, the legislation requires that the person is first issued with a direction to return the trolley, and that they are told they may be given an infringement notice if they do not comply.

The offence of failing to identify ownership of trolleys contains a specific exemption for situations where the information is removed or made illegible by someone other than the retailer.

For the offence of failing to comply with a removal notice, a retailer is first given notification, as well as a time period to comply.

The offence of interfering with the removal notice parallels similar offences such as the s12EB in the *Roads and Public Places Act 1937* (removing, defacing or interfering with a notice on an abandoned vehicle).

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause explains that the proposed Act will commence on a day fixed by the Minister by written notice. Otherwise, it will commence six months after the notification day. The flexibility in the start date is to ensure retailers are given appropriate lead in time to become compliant with the new Act.

Clause 3 Legislation Amended

This clause is a formal provision to identify that the Bill amends the *Litter Act 2004* and the *Magistrates Court (Litter Infringement Notices) Regulation 2004*.

Clause 4 New part 4A

This clause inserts a new Part 4A into the *Litter Act 2004*

24C Definitions—pt 4A

24C defines terms used in the bill. The definition of *removal notice location* clarifies that a trolley can move a short distance from the original position it was left, without affecting the requirement for a retailer to collect it in accordance with a notice.

24D Shopping trolleys left in public places

This section specifies that it is an offence for an individual to leave a shopping trolley in a public place. This is a strict liability offence. However, it only applies if the person does not comply with a direction to return the trolley to the appropriate retailer.

24E Direction to return shopping trolley

This section empowers an authorised person or police officer to issue a written direction to a person to return a trolley to the retailer. It can only be given to people believed on reasonable grounds to have left, or to be intending to leave, a shopping

trolley in a public place. The direction must provide for a reasonable compliance time, and also explain the consequences of failing to comply.

24F Identification of ownership of shopping trolleys

This section requires retailers to mark their trolleys with a unique identification number, contact details, and the telephone number for a contact service operated by the territory to receive information about shopping trolleys left in public places. The information makes it easy for the public and authorities to identify the trolley owners and to make contact. The unique identifier allows authorities to be certain of which trolleys have been left in a public place in breach of a removal notice.

24G Removal of shopping trolleys from public places

This section specifies that an authorised person or police officer can remove a shopping trolley to a retention area if the retailer has not complied with a removal notice. It permits the immediate removal of a trolley in situations where the trolley could reasonably cause injury to a person or animal or damage to property or a public place. It also permits immediate removal if it is impractical for the retailer to remove the trolley themselves.

24H Notice to remove shopping trolley from public place

This section specifies how notification must be given to the owner of a trolley left on public land. The removal notice is attached to the trolley and contains details about the trolley, the location, the requirements for removal, and the penalties for failure to comply. This physical placement of the notice ensures an authorised person knows that it is the relevant trolley when they return to the site later. It also lets the public know the trolley is being dealt with by the authorities. Notice must also be given to the retailer via telephone to ensure they know about their obligation. The retailer has 24 hours from the time of notification to collect the trolley.

The section also specifies that it is a strict liability offence not to comply with the notice.

24I Small retailers and trolley containment systems

The section allows regulations to be made exempting small retailers from penalties under section 24H. It recognises that retailers who own only a small amount of trolleys could face a disproportionate burden.

It also exempts retailers who operate a ‘trolley containment system’ at their store, such as a coin lock system, or a wheel lock system. Other acceptable containment systems can be approved by the chief executive. This is intended to encourage retailers to take measures to prevent trolleys leaving their premises in the first place. It allows them flexibility as to whether they will use a particular containment system or whether they will operate a responsive trolley collection system.

24J Retention of shopping trolleys left in public places

This section establishes the procedure that is to be followed once a trolley is removed to a retention area. The chief executive must write to the retailer to provide details of the trolley, its collection or disposal, and any costs the retailer must pay. This ensures a retailer has adequate notice that their property is impounded, and can collect it. The section also allows the Territory to recover the reasonable costs of removing the trolley. This is justified, given that the retailer is responsible for their trolleys, and that in most cases they will have been given notice, and time to remove the trolley from the public area themselves.

24K Disposal of retained shopping trolleys

This section confirms that the *Uncollected Goods Act* applies to trolleys once they are removed to a retention area. In addition, it specifies that if any trolleys are to be disposed of under the *Uncollected Goods Act*, they must be recycled to the extent reasonably practicable.

24L Removing, defacing or interfering with removal notices

This section creates a strict liability offence of removing or defacing or otherwise interfering with a removal notice placed on a trolley under section 24H.

Clause 5 Magistrates Court (Litter Infringement Notices) Regulation 2004, schedule 1, new items

This clause inserts new items into schedule 1 of the *Magistrates Court (Litter Infringement Notices) Regulation 2004* to provide for infringement notices for the new offences as an alternative to prosecution.