

2003

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

LITTER BILL 2003

Explanatory Statement

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Outline

The Litter Bill 2003 (the Bill) repeals the *Litter Act 1977* (the repealed Act) and enacts a new Litter Act which reflects contemporary litter control legislation.

The Bill retains basic litter offence provisions but, also, includes a range of new provisions which are intended to decrease littering behaviour and improve enforcement capacity. The key differences between the repealed Act and the Bill are that the Bill includes provisions which:

- expand the definition of “public place” to include any place to which members of the public have access;
- make it an offence where litter is deposited on any leased land in such a way that it is likely to escape into a public place;
- make it an offence to deposit litter in receptacles provided in public places where the receptacles are not suitable for the deposit of litter of that nature or quantity;
- make it an offence for someone to require someone else to transport a load in contravention of the requirement to properly secure the load;
- extend liability for putting flyers on motor vehicles to the persons who organise such activities;
- clearly spell out powers of authorised officers in relation to entry to private premises;
- enable an authorised officer to request a litterer to remove litter;

- enable an authorised officer to give a written direction requiring a litterer to remove litter;
- enable an authorised officer to remove litter if a litterer fails to comply with a direction;
- provides for a litterer to be liable for the rectification costs associated with the removal of litter; and
- enable an infringement notice to be issued to the registered operator of a motor vehicle from which a littering offence is committed.

CLAUSE NOTES

Clauses 1 to 5 – Formal clauses

Clauses 1 to 5 are formal clauses which:

- state the name of the Act being created;
- provide for commencement of the Act;
- provide that the dictionary at the end of the Act forms part of the Act;
- make clear that an explanatory note does not form a part of the Act;
and
- explain that the provisions of *Criminal Code* and the *Legislation Act 2000* apply to offence provisions in the Act.

Clause 6 – Objects of the Act

Clause 6 states the objects of the Act.

Clause 7 – Meaning of “litter”

Clause 7 is intended to put beyond doubt that certain items are included within the definition of litter.

Clause 8 – Littering

Clause 8 sets out the basic littering offences in the Act. Some of the offences are revised versions of offences in the repealed Act while others are entirely new littering offences.

Clause 8(1) makes it an offence to deposit litter at a public place. While this provision is based on an existing offence,¹ the term “public place” is defined more broadly so that it encompasses not only unleased Territory land and

¹ s.3, *Litter Act 1977*

roads and road related areas, such as car parks. It will now also extend to other places (including leased land) to which members of the public have access.

The maximum penalty for this offence is 10 penalty units.

Clause 8(2) is an entirely new provision which makes it an offence to deposit litter in any place in such a way that it escapes, or is likely to escape, onto a public place.

The maximum penalty for this offence is 10 penalty units.

Clause 8(3) is a new provision which makes it an offence to deposit litter in a public place in a receptacle designed for the purpose, but which is not appropriate having regard to the nature, volume, size or shape of the litter deposited. This provision is intended to address the inappropriate disposal of, predominantly, household or commercial refuse into litter receptacles provided in public places.

The maximum penalty for this offence is 10 penalty units.

Clause 8(4) is to the effect that no offence is committed pursuant to **clauses 8(1) or 8(2)** where:

- a garbage bin is left for the purpose of garbage collection;
- the deposit of litter is done with authority or consent; or
- litter is deposited at a public landfill or waste transfer station.

Clause 8(5) is to the effect that no littering offence occurs where the depositing of litter is accidental and the person who deposits the litter takes all reasonable steps to retrieve the litter.

Clause 8(6) describes some of the ways in which it is possible for litter to escape into public land, for the purpose of **clause 8(2)**.

Clause 8(7) provides that littering offences are strict liability offences.

Clause 9 – Aggravated littering

Clause 9 is a revised version of a provision in the repealed Act² which provides for a higher penalty for an act of littering likely to cause injury to a person or damage to property. The revised version of the offence also applies where an act of littering is likely to cause injury to an animal.

A maximum penalty of 50 penalty units or 6 months imprisonment or both is provided.

Clause 10 - Commercial waste

Clause 10 is to the same effect as a provision in the repealed Act³ which makes it an offence to deposit commercial waste in a public place. The maximum penalty remains 50 penalty units or 6 months imprisonment or both.

Clause 11 – Offences about vehicle loads

Clause 11 deals with offences related to the transport through a public place of materials or things on vehicles.

Clause 11(1) creates a new offence where a person requires someone else to move a vehicle carrying a load and the person fails to give to the person required to move the load adequate means to secure the load so that it is not likely to fall, or be dislodged, from the vehicle.

² s.3(a), *Litter Act 1977*

³ s.3A, *Litter Act 1977*

This offence has been included, primarily, to address concerns that employees in some industries such as building and landscape supply and removals may be pressured by their employers to transport materials which are not adequately secure to prevent them falling or being blown from a vehicle. While the main concern is the power imbalance in employer/employee relationships which could be brought to bear, the provision is of more general application to ensure that it covers other relevant circumstances.

The maximum penalty is 50 penalty units or 6 months imprisonment or both.

Clause 11(2) substantially replicates an offence in the repealed Act⁴ which makes it an offence for a person to transport a load on a vehicle where the person fails to properly secure the load so that it is not likely to escape. The maximum penalty remains 50 penalty units.

Clause 12 – Depositing or abandoning dangerous containers

Clause 12 substantially replicates a provision of the repealed Act⁵ which makes it an offence for a person to deposit or abandon a dangerous container in a public place. A dangerous container is defined in **clause 12(1)** to be one in which there is a compartment of specified dimensions. The offence is not committed where the person took reasonable steps to prevent children gaining access to the compartment in the container.

The maximum penalty remains 50 penalty units.

Clause 13 – Placing advertising leaflets on motor vehicles

Clause 13 expands an offence provision of the repealed Act.⁶ The repealed Act made it an offence where a person placed an unsolicited leaflet or similar

⁴ s.4, *Litter Act 1977*

⁵ s.7A, *Litter Act 1977*

⁶ s.7B, *Litter Act 1977*

item on a motor vehicle. An offence to this effect is in **clause 13(1)**, with a maximum penalty of 10 penalty units.

A new offence is created in **clause 13(3)** where a person commissions, authorises, arranges for or distributes any unsolicited leaflets by placing them on motor vehicles. The reason for including this new provision is that liability for the offence should not be limited to the person who actually places the leaflet on the vehicle, but should, equally, attach to a person who organised for this to be done.

The maximum penalty for the new offence is also 10 penalty units.

Part 4 – Enforcement

Part 4 comprises provisions dealing with authorised persons, inspection powers, and directions to remove litter.

Clause 14 – Appointment of authorised officers

Clause 14 is an up to date form of a provision in the repealed Act⁷ which enables the appointment of authorised officers for the Act.

Clause 15 – Identity cards for authorised persons

Clause 15 is a routine provision included in ACT regulatory legislation which requires that an authorised officer must have an identity card and must return it if he or she ceases to be an authorised officer.

Clause 16 – Power not to be exercised before identity card shown

Clause 16 is a routine provision included in ACT regulatory legislation which:

⁷ s.8, *Litter Act 1977*

- obliges an authorised officer to show his or her identity card before he or she may exercise a power under an Act; and
- provides that an authorised officer cannot remain on premises if he or she fails to show his or her identity card.

Clause 17 – Powers of authorised persons

Clause 17 is a routine provision in ACT regulatory legislation which enables an authorised person to require the occupier of premises to state the person's name and address. It is an offence if a person fails to comply with this requirement. The maximum penalty is 5 penalty units.

Clause 18 - Entry to premises

Clause 18 is a provision which sets out the circumstances in which an authorised officer may enter premises for the purposes of the Act. It provides that entry to premises is only authorised where the officer suspects on reasonable grounds the commission or likely commission of an offence against the Act.

Further, an authorised officer may only enter residential premises with the consent of the occupier and may enter non-residential premises at any reasonable time.

Clause 19 – Consent to entry

Clause 19 is a routine provision in ACT regulatory legislation which sets out the obligations of an authorised officer who is seeking consent to entry to premises, including the requirement to seek written acknowledgement from an occupier that he or she has consented to entry to premises.

Clause 20 – Request to remove litter

Clause 20 is a new provision which enables an authorised officer or police officer to request a litterer to remove the litter the litterer has deposited.

Failure to comply with the request is an offence with a maximum penalty of 10 penalty units.

Clause 21 – Direction to remove litter

Clause 21 is a new provision which applies where an authorised person believes on reasonable grounds that litter has been deposited in a public place.

It enables an authorised person to issue a written notice to the litterer to:

- remove or dispose of the litter; and/or
- restore a place affected by the litter.

The notice can state the time frame in which the direction must be complied with and/or the manner in which it must be complied with. It must also advise the litterer that failure to comply may result in an authorised person removing the litter with the litterer becoming liable to meet the cost of that removal.

Failure to comply with a notice is an offence with a maximum penalty of 10 penalty units.

Clause 22 – Authority to remove litter when direction not complied with

Clause 22 is a new provision which enables an authorised person to enter premises to carry out removal or disposal of litter where a person has failed to comply with a direction under **clause 21** to remove litter.

Clause 23 – Liability for cost of rectification work

Clause 23 is a new provision which enables the Territory to recover the cost of removal or disposal of litter from a person who has failed to comply with a direction to remove or dispose of the litter.

Clause 24 – Review of decision to give direction

Clause 24 is a routine provision included in relation to provisions which vest discretionary powers in public officials. It enables an appeal against a decision in relation to the giving of a direction to remove litter.

Clause 25 – Determination of fees

Clause 25 replicates a provision of the repealed Act⁸ enabling the Minister to determine fees for the purposes of the Act.

Clause 26 – Approved forms

Clause 26 replicates a provision of the repealed Act⁹ enabling the chief executive to approve forms for the Act.

Clause 27 – Regulation making power

Clause 27 replicates a provision of the repealed Act¹⁰ to provide for the Executive to make regulations for the Act.

Clause 28 – Legislation repealed

Clause 28 repeals the *Litter Act 1977* as it is replaced by the provisions in the new Act. **Clause 28** also repeals the *Litter Regulations 1993*. The

⁸ s.12, *Litter Act 1977*

⁹ s.13, *Litter Act 1977*

¹⁰ s.14, *Litter Act 1977*

regulations are no longer necessary as they deal solely with the prescribed penalties for infringement notice offences under the repealed Act. Prescribed penalties for litter infringements will now be set out in regulations made pursuant to the provisions of the *Magistrates Court Act 1930*, which contains a uniform infringement notice scheme.

Clause 29 – Legislation amended

Clause 29 is to the effect that legislation set out in **Schedule 1** is amended.

Schedule 1 - Consequential amendments – Magistrates Court Act 1930

Schedule 1 sets out a series of amendments to the existing infringement notice provisions in the *Magistrates Court Act 1930*, which are required to apply the “operator onus” principle where a littering offence occurs from a vehicle.

“Operator onus” provisions already apply in the ACT in relation to traffic and parking offences. Provisions in the *Road Transport (General) Act 1999* are to the effect that where an offence involving a motor vehicle occurs the responsible person for the vehicle (generally the person in whose name the vehicle is registered) may be issued with an infringement notice for the offence. If the person to whom the notice is issued claims not to be the offender that person can provide a statutory declaration stating:

- the vehicle had been sold or otherwise disposed of;
- the vehicle had been stolen or otherwise illegally used;
- the name of someone else who was driving the vehicle; or
- that someone else whose identity is not know was driving the vehicle.

These declarations may then be used to ascertain who was the driver and, therefore, the offender, at the time of the offence.

The new provisions in the *Magistrates Court Act* are a modified version of the provisions in the *Road Transport (General) Act* to enable the same approach to be used to issue an infringement notice to the offender where an act of littering is committed from a vehicle.

Clause 1.1 – Section 117, new definitions

Clause 1.1 inserts into section 117 of the Act new definitions of various terms used in the new provisions.

Clause 1.2 – New Division 8.2A

Clause 1.2 inserts a ***new Division 8.2A*** to enable infringement notices to be issued where an offence involves a vehicle.

New section 131A – Definitions for Division 8.2A

New section 131A inserts definitions of “infringement notice” and “vehicle related offence” – terms which are used in the ***new Division 8.2A*** enabling infringement notices to be issued to a person responsible for a vehicle – usually the registered owner.

Regulations will be made to declare the offences of littering in **clauses 8(1)** and **(2)** of the *Litter Act* to be offences to which this division relates. This will enable infringement notices to be issued to the persons responsible for vehicles from which littering occurs.

However, it should be noted that the declaration in relation to **sections 8(1)** and **(2)** will be qualified so that the provisions of ***new division 8.2A*** of the *Magistrates Court Act* will not apply in respect of an act of littering which is committed from a public vehicle such as a bus or taxi, which is operating as a public vehicle at the time the offence is committed. This will mean that no infringement notice will be able to be issued to the responsible person for a

public vehicle and there will not, therefore, be an onus on that person to identify the litterer.

New section 131B – Service of infringement notices on responsible persons for vehicles

New section 131B permits an authorised person who believes on reasonable grounds that a vehicle related offence has been committed to issue an infringement notice to the responsible person for the vehicle.

New section 131C – Liability for vehicle related offences

New section 131C provides that the responsible person for a vehicle on whom such a notice is served is liable for the offence, even though someone else may have committed the offence.

However, ***new section 131C(3)*** provides that in a prosecution against a responsible person for a vehicle related offence it is a defence if the responsible person establishes that:

- the vehicle was stolen or illegally used; or
- the responsible person has given to the administering authority a *known offender declaration* (ie identifying who was driving the vehicle or who committed the offence); or
- the vehicle had been sold or disposed of; or
- the person was not the driver of the vehicle and is unable to ascertain who was.

New section 131D – Illegal user declarations

New section 131D sets out the information to be included in an *illegal user declaration*. It provides that where a responsible person who has been served with an infringement notice for a vehicle related offence provides such a

declaration the person identified in the declaration as the person who was in charge of the vehicle may be served with an infringement notice for the offence.

Under ***new section 131D(4)*** that person then becomes liable for the offence but may, in turn, provide a *known offender declaration* to identify some other person as the driver of the vehicle at the time of the offence or the person who actually committed the littering offence.

New section 131E – Known offender declarations

New section 131E sets out the requirements for a *known offender declaration*. It must state that the person who has been served with the infringement notice is not the person who committed the offence and either identify the person who was the driver of the vehicle at the time of the offence or identify the person who was seen to have committed the offence. Where possible, it must also give details of the address of the offender.

Where a *known offender declaration* is made the administering authority can issue an infringement notice for the offence to the named offender who becomes liable for the offence.

New section 131F – Sold vehicle declarations

New section 131F sets out the information to be included in a *sold vehicle declaration* and enables the administering authority to issue an infringement notice for the relevant offence to the person named as the buyer of the vehicle.

The buyer becomes liable for the offence but may, in turn, make a *known offender declaration* identifying another person as the offender or driver of the vehicle at the time of the offence.

New section 131G – Unknown offender declarations

New section 131G sets out the information which must be included in an *unknown offender declaration*. It must state that the responsible person for the vehicle did not commit the offence and was not the driver of the vehicle at the time of the offence, that the person has made enquiries to find out who was the driver of the vehicle or the offender and has not been able to determine either. It must provide detail as to the nature and extent of the inquiries made.