

2019

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

Litter Legislation Amendment Bill 2019

REVISED EXPLANATORY STATEMENT

**Presented by
Chris Steel MLA
Minister for City Services**

Introduction

This explanatory statement relates to the Litter Legislation Amendment Bill 2019 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Background

Littering and illegal dumping occurs in many forms, from the dropping of food wrappers and receipts to more dangerous and bulky items like syringes and household goods. Issues range from people dropping rubbish, for example out a car window, to items on private property escaping onto public land (including from building sites), to the dumping of large volumes of waste in remote locations.

Littering and illegal dumping is an increasing problem in the ACT and this presents ongoing social, economic and environmental issues. Litter can degrade the amenity of a place, reducing its value to the community. Litter and dumped waste can also end up in nature reserves and waterways which can cause harm to people and animals, as well as the broader environment. There is also a significant economic cost to Government and the community in terms of cleaning up and disposing of litter and illegally dumped items.

The legislation regarding litter has not been comprehensively reviewed in 15 years. This Bill amends the *Litter Act 2004* to ensure it is up-to-date, best practice, effective and in line with community expectations around preventing, reducing and effectively responding to litter and illegal dumping in the community.

Waste and the cleanliness of our suburbs and open spaces is an issue that is important to Canberrans. This is clear through the Better Suburbs Statement 2030, as well as the many requests lodged through 'Fix my Street'. Data obtained by the Transport Canberra and City Services Directorate shows that litter and illegal dumping occurs everywhere and in various forms – it is a Territory-wide issue.

The aim of the Bill is to protect and enhance the natural and built environment, as well as the amenity and wellbeing of residents of the ACT, and to reduce the economic and health impacts of littering and illegal dumping in all its forms.

Overview of Amendment Bill

In summary, the Bill provides amendments to the *Litter Act 2004* to:

- a) update the objects of the Act to reflect that these should be to protect and enhance the natural and built environment, amenity and wellbeing of residents of the ACT, and to reduce the economic and health impacts of littering and illegal dumping, by:
 - i) reducing and preventing instances of littering, including illegal dumping;
 - ii) effectively regulating the depositing of any form of litter, or other material that may become litter; and
 - iii) facilitating the removal of litter.
- b) make minor amendments to the definition of litter to expressly include dockless bikes and define some of the terms used. This will ensure regulatory capture of any future dumping of a dockless bike or similar item.
- c) make adjustments to the wording of offence provisions to appropriately capture all littering offences and provide clear examples. The amended offence provisions cover items that are likely to become litter. For example, not appropriately containing building waste onsite, such as foam blocks that become litter when blown offsite on a windy day. Other examples include depositing advertising or other material in inappropriate locations, including on infrastructure such as light poles, and leaving litter in a private open space that is likely to escape onto someone else's private open space. Previously only items that ended up on a public place were captured, which was a gap in the regulatory framework.
- d) provide regulatory capture for a situation where litter is deposited in an open private place and negatively impacts on a public place or another private place, for example the amenity (including smell) of a public place or another private place. This is consistent with other Australian jurisdictions.
- e) set up an escalating framework to deal with litter on a private site, including hoarding of items that are litter. This allows for a staged approach including education and awareness, a show cause and a notice to remedy, followed by an abatement order where appropriate and other mechanisms have not been successful. Appropriate safeguards have been provided for and the provisions complement abatement orders available under the *Public Health Act 1997* on public health grounds. This allows for TCCS, where all other actions have been unsuccessful, to enter a site to clean-up and abate the hoarding of litter. Appropriate processes must be followed, including following a mandatory code of practice, and an application to the ACT Magistrates Court. Importantly, this framework does not criminalise the mental health issue of hoarding. The provisions do not take effect until a time fixed by the Minister.
- f) introduce an offence that captures construction material not being appropriately contained onsite which results in those items becoming litter.
- g) introduce a strict liability offence for aggravated littering of specific items listed by regulation, such as syringes and cigarettes. This specific offence already exists in other Australian jurisdictions.

- h) set up a framework within the Act for escalating offences so that penalties increase with the volume, mass or nature of litter dumped. The Bill introduces new offence levels for dumping litter beginning at 1 litre and ranging up to 1000 litres and above. Dumping litter of over 200 litres (as well as aggravated littering of dangerous items) are prosecutable with an attached jail term.
- i) expand on the existing laws for offences about vehicle loads with a new section specifically dealing with vehicle related offences. This new section covers vehicles and trailers with uncovered loads, as well as littering and dumping involving a vehicle (which is broader than just littering from a vehicle). An infringement notice can be issued to the registered owner of a vehicle involved in a 'vehicle related offence' or incidental vehicle offence. This includes, for example:
 - i) where a person is observed littering, for example dropping a cigarette butt on public land, and then gets into a vehicle and drives away;
 - ii) where a person gets out of a vehicle and dumps white goods on public land, is approached by an authorised person and then gets back in to the vehicle and drives away without being identified other than by number plate;
 - iii) where a person gets out of a vehicle and dumps a mattress on public land and the offence and registration details are captured on surveillance camera; or
 - iv) where an abandoned vehicle is illegally left on public land and the registered or last registered owner can be identified through registration details.
- j) Introduce a new provision that enables an abandoned vehicle to be treated as litter once it is deemed abandoned and then disposed of immediately where the vehicle is of no to low value (for example, a burnt out wreck) and within a short timeframe where the car is of significant value. This facilitates the removal of litter in a timely manner and reduces the significant costs of impoundment of abandoned vehicles to the Territory. This provision:
 - i) enables an authorised person under the Act to enter a vehicle, in the case where number plates have been removed or switched and the owner cannot be identified, to obtain information to identify the owner and attempt to make contact;
 - ii) removes the current requirement to hold abandoned vehicles of significant value for three months and reduces this to 14 days;
 - iii) removes the current requirement to hold abandoned vehicles of low value for one month and allow the vehicle to be disposed of immediately once it becomes an uncollected good.
 - iv) removes the current requirement to move a vehicle of no value to a retention area and allows the vehicle to be disposed of immediately.
- k) Make minor changes to clarify and improve the wording of existing offence and enforcement provisions, and where needed provide examples. This does not change the intent of these provisions.

- l) Increase the general regulation power to allow the making of offences with a maximum penalty of up to 30 penalty units. This is consistent with the Justice and Community Safety *Guide for Framing Offences 2005* (Guide for Framing Offences).
- m) Increase the infringement notice amounts for some offences in the Act, consistent with the Guide for Framing Offences, to more appropriately and proportionately reflect the nature of the offence. This includes:
 - i) increasing the infringement notice for littering if the item is small, for example a lolly wrapper or chip packet, from \$60 to \$150 for an individual;
 - ii) increasing the infringement notice for littering if the item is larger than a lolly wrapper up to 1 litre from \$200 to \$300 for an individual;
 - iii) increasing the infringement notice for depositing litter where it escapes or is likely to escape into another place from \$200 to \$300 for an individual;
 - iv) increasing the infringement notice for placing waste of inappropriate size, shape, type in a public bin from \$200 to \$300 for an individual;
 - v) making infringement notice fine for dropping a cigarette butt \$500 for an individual, regardless if it is lit/unlit or extinguished;
 - vi) increasing the infringement notice for not securing a load on a vehicle or a trailer from \$500 to \$1,500 for an individual;
 - vii) increasing the infringement notice for directing another person to move a load on a vehicle or a trailer without providing means to secure it from \$500 to \$1,500 for an individual;
 - viii) increasing the infringement notice for distributing of unsolicited leaflets on motor vehicles or a structure from \$100 to \$200 for an individual;
 - ix) increasing the infringement notice for distributing, commissioning, authorising or arranging the distribution of unsolicited leaflets on motor vehicles or a structure from \$100 to \$200 for an individual; and
 - x) increasing the infringement notice for not returning a shopping trolley when directed to by an authorised person from \$60 to \$150 for an individual.
- n) Introduce new infringement notice amounts for some new offences in the Act, consistent with the Guide for Framing Offences, to appropriately and proportionately reflect the nature of the offence. This includes:
 - i) an infringement notice for dumping litter consistent with a level one offence of \$500 for an individual, where between one litre and ten litres of litter are dumped;
 - ii) an infringement notice for dumping litter consistent with a level two offence of \$1,000 for an individual, where between ten litres and 200 litres of litter are dumped;
 - iii) an infringement notice for dumping litter consistent with a level three offence of \$1,500 for an individual, where between 200 litres and 1000 litres of litter are dumped;
 - iv) an infringement notice for not complying with a notice to remove litter of \$300 for an individual;

- v) an infringement notice for not complying with a direction to remove litter of \$300 for an individual; and
 - vi) an infringement notice for not complying with a removal direction for a vehicle of \$300 for an individual.
- o) Ensure that future items, such as dockless bikes or similar items, can be captured by a regulatory scheme similar to shopping trolleys through Regulation in the future as needed.

Human rights implications

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistently with human rights. This includes ensuring any amendments result in a law that is proportionate – that is, that it limits rights in the least restrictive way possible to achieve the purpose of the legislation. This includes considering if any amendment is going to have a disproportionate impact on low income earners or other vulnerable people, engaging the right to equality under section 8 of the HR Act.

During the development of the Bill due regard was given to its compatibility with human rights as set out in the HR Act. The amendments introduced in the Bill give effect to a contemporary and best-practice regulatory scheme for dealing with litter and illegal dumping.

As a law of the Territory, the Bill may be seen as engaging the following human rights in the HR Act:

- the right to be presumed innocent until proven guilty;
- the right to privacy; and
- the right to equality before the law.

An assessment of the Bill against section 28 of the HR Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purposes; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

A compatibility statement under the HR Act has been issued by the Attorney-General.

Right to be presumed innocent until proven guilty

The following proposed amendments have been identified as potentially engaging this human right:

- Creation or expansion of strict liability offences
 - A number of proposed amendments result in the creation or amendment of strict liability offences.
 - Strict liability offences arise in a regulatory context where reasons such as public standards, environmental protection, safety, community wellbeing and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.
 - The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent enforcement regime can operate efficiently as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring community wellbeing, environmental and safety standards. The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law.
 - The offences that are strict liability and have infringement notices are designed to enable a quick and effective response where parties have failed to meet obligations, and are intended to act to prevent a harm, being either a community wellbeing, environmental or public safety harm.
 - The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work together with a comprehensive education and awareness package.
 - In developing the amendments an assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act. This is considered the least restrictive means whilst ensuring high community standards, environmental protection and community safety.
 - Strict liability in these circumstances is considered to be reasonable and proportionate to the objective of the offence and its importance as a matter of public policy to achieve the intended objectives.
 - This is explained in more detail in the below explanatory statement for each offence.

Right to privacy

The following proposed amendments have been identified as potentially engaging this human right:

- Power to enter an abandoned vehicle
 - The amendments would allow an authorised person to enter a vehicle that is reasonably suspected to be abandoned, at the place where it is abandoned, for the purpose of identifying the vehicle and the responsible person for the vehicle. For example, accessing the VIN number of the vehicle.
 - This power is only to be used when any other external identifying information, such as the vehicle's number plate, has been removed, switched, or is not readable or otherwise useable.
 - An authorised person exercising this power must commit the least possible damage whilst entering the vehicle and once access has been gained take only the actions necessary to gain the information required to identify the vehicle and responsible person.
 - Any private information contained within the vehicle should be treated as confidential, not be examined by the authorised person and secured within the vehicle.
 - This power will only apply to abandoned vehicles not vehicles generally.
 - While this could be considered to have a disproportionate effect on people who have vehicles stolen which contain personal items or information, this amendment will expedite the return of a stolen vehicle to an owner, along with the personal items or information, where previously this was not possible.
 - This amendment could be considered to have a disproportionate effect on people who choose to abandon vehicles containing personal items or information. This power is necessary and already currently available after the collection period has expired under the *Uncollected Goods Act 1996*. The amendment simply reduces the timeframe for this to occur to enable efficient action to be taken with respect to abandoned motor vehicles.
 - Appropriate safeguards, as highlighted above, have been built in.
- Littering at an open private place – general littering or dumping
 - This amendment expands the offence of littering and dumping to an open private place, as well as a public place.
 - This amendment is intended to enable penalties to be imposed on someone who litters on someone else's private land. This would include someone in a public laneway tossing a coffee cup or food wrapper over a fence. This is no different to dropping it on the ground in a laneway and should be treated equally as an offence.

- This amendment could be considered to have a disproportionate effect on people and the activities they can conduct in their own private space such as a backyard. To address this, safeguards have been included which exempt the occupier of an open private place, or a person who has the permission of an occupier of the place, from being captured by this provision.
- The intention of the amendment is to regulate people's littering impacting on someone else's private place and not the activities they conduct on their own premises.
- Significant and extensive littering at an open private place – improper use of place and hoarding (an amenity impact)
 - This amendment seeks to provide an ability to remedy a situation where extensive amounts of what a reasonable person would consider litter have been accumulated at open private premises causing an amenity impact. This amendment applies where the activity is significantly impacting on the occupiers of the surrounding land, being either a public or private place, in terms of amenity, wellbeing and the proper use and enjoyment of that place.
 - There are generally two circumstances where large amounts of litter accumulate on private residences.
 - The first is where the person responsible for the litter is suffering from a mental health condition (for example, a hoarding disorder). People suffering from this condition are recognised as vulnerable and the amendments do not seek to criminalise mental health issues, but to provide a mechanism to assist both the person and the community in resolving the hoarding issue through a staged and proportionate approach.
 - The second is where there is no mental health component and the occupier of the land has no regard for the proper use of place and what would be reasonably expected by a reasonable person to occur in that space.
 - This amendment ensures appropriate protections for those who have a mental health condition. A mandatory code of practice is provided for to guide the resolution process where a mental health issue has been identified.
 - The key aspect of these amendments is the issuing of an abatement order requiring the responsible person to clean up the site and remove the litter, or alternatively allowing the Government to enter the site and assist and/or undertake the clean-up on application to the ACT Magistrates Court. This is only used as a last resort where all other attempts to address the problem have been unsuccessful and does not result in criminalisation of the behaviour.
 - To ensure behaviour relating to mental health issues are not criminalised, there is no offence provision related to causing the initial amenity circumstance. A criminal offence only occurs under these provisions when a court-imposed order is not complied with.

- This approach will achieve the policy intent of reducing significant littering on private property, which can have substantial impacts on the rights, including human rights, of neighbours and the broader community, in the least restrictive way and ensuring that mental health is not criminalised.
- There are a significant number of considerations and safeguards provided in this new escalating and proportionate framework. The new framework will not come into effect until a time fixed by the Minister so that the mandatory Code of Practice can be developed.

Right to equality before the law

The following proposed amendments have been identified as potentially engaging this human right:

- Significant and extensive littering at an open private place – improper use of place and hoarding.
 - These amendments may disproportionately affect vulnerable groups such as low income earners. Education and awareness will be prioritised in these situations consistent with internal policy, as well as providing support services where necessary.
 - The background of a person responsible for littering on private property may be different to those who are being impacted by it. These amendments take this into account when determining if an amenity impact circumstance has occurred so as not to discriminate against the responsible person causing the circumstance.

Human rights have been considered in developing the Bill and limiting rights in the least restrictive way possible, while achieving the purpose of the Bill.

The impacts on people's rights is considered reasonable and proportionate to the objectives of the legislation and the risks and outcomes for the community, the environment and community safety.

Climate Change impacts

The Bill has no identifiable climate change impacts.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act as the Litter Legislation Amendment Act 2019.

Clause 2 Commencement

This clause sets out that all provisions in the Act, other than the provisions expressly mentioned below, commence on the day after the Act's notification day.

Sections 24, 24, 28, 31 and 33, which relate to the management of hoarding issues including the development of a mandatory code of practice for the management of hoarding, will commence on a day fixed by the Minister.

Clause 3 Legislation Amended

This clause states that the Act amends the *Litter Act 2004*, *Litter Regulation 2018*, *Magistrates Court (Litter Infringement Notices) Regulation 2004*, *Public Unleased Land Act 2013* and *Uncollected Goods Act 1996*. It is also noted that this Act amends other legislation as per Schedule 1, which is the *Road Transport (Safety and Traffic Management) Act 1999*.

PART 2 LITTER ACT 2004

Clause 4 Section 6

This clause substitutes the existing objects of the Act, with a new set of objects. The new objects have been updated to reflect that the Act should protect and enhance the natural and built environment, and amenity of the ACT and the wellbeing of its residents, and to reduce the economic impacts of littering and illegal dumping. These will be achieved by:

- reducing and preventing instances of littering, including illegal dumping;
- effectively regulating the depositing of any form of litter, or other material that may become litter; and
- facilitating the removal of litter.

Clause 5 Meaning of *litter*

Section 7, definition of *litter*

This clause removes the term 'for example' before the list of items that are considered to be litter. The omission of the phrase 'for example' from the definition of litter is technical in nature and avoids placing an example within an example. This does not change or broaden the definition of what constitutes litter. The items listed

in subsections (a) and (b) remain examples of what litter includes, although not expressly stated.

While the lists in subsection 7 are no longer examples specifically, this is not an exhaustive list of what constitutes litter under the Act.

Clause 6 Section 7, definition of *litter*, par (a), new example

This clause extends upon the existing definition of litter to include a dockless bicycle. It would cover a situation where a person dumps or inappropriately places a dockless bike, similar to shopping trolleys.

Clause 7 Section 7, definition of *litter*, note

This clause inserts an example of what would make a place untidy or adversely affect the proper use of a place.

Soil is included in the definition of litter so it may appear that the example is unnecessary because soil is already litter. There are however circumstances where these items would not be considered litter such as in a garden. However, when these items are left in large quantities or in an inappropriate place, such as a school playground or a roadside where they are not meant to be, then they would be considered inappropriate for the use of the place and therefore be litter. This is true for paper and plastic and several other items in the list which are often useful products, which become waste and then litter, depending on how they are disposed.

The inclusion of the new example regarding soil or rocks assists with the reading of the Bill and clarifies how an item such as soil would contribute to making a place untidy and when it would be considered litter.

Offences within the Bill relating to litter, including strict liability offences, extend beyond the definition of litter and include how that litter is deposited. Several safeguards within offences exist to protect against the issuing of unreasonable infringement notices. For example, simply moving soil around a property would not cause an offence whereas placing it in a public park would. Similarly, a large pile of soil would not cause an offence if the soil were for the purpose of road maintenance and placed with the consent of the ACT Government.

Clause 8 New Section 7A

This clause inserts table 7A which sets threshold 'levels' for the strict liability offences of dumping litter set out in section 9B. This establishes an escalating framework where the offence is proportionate to the amount of litter dumped. Under the existing regulation, the volume which triggered this offence was a single volume of 10 litres. Once this relatively small volume was exceeded there was no escalating penalty for dumping at greater quantities. For example, there was no difference in the maximum penalty for dumping 11 litres of litter compared to 1000 litres of litter. Under the new framework there are three levels for dumping litter. Level one is for dumping between 1 and 10 litres, level 2 is between 10 and 200 litres and level 3 is greater than 200 litres. This new framework allows for an escalating and proportionate enforcement approach, similar to other jurisdictions, that applies the most serious penalties to the most serious offences.

Clause 9 Sections 8 to 9B

This clause gives effect to an escalating framework for litter and illegal dumping.

Section 8 Littering

This clause amends the existing provisions for the offence of littering generally and the dumping of litter, including updated penalties.

In subsection 8 (1) the infringement notice for the offence of littering has been increased to \$150 for small items such as lolly wrappers and receipts and \$300 for any other litter. Making a distinction between small and larger items is considered reasonable and proportionate to the nature of the offence. Littering can have serious health, environmental and amenity impacts.

Cigarette butts have been removed from this section as they are now covered under aggravated littering to reflect the dangers that dropping a cigarette can cause. The ACT Emergency Services Agency (ESA) has stated that data from 2011 to date shows that approximately 13% of all landscape (grass and bush) fires have been caused by discarded cigarettes. As such the practice poses a clear risk to public safety, particularly in the unique ACT environment.

This clause also extends the existing provision for littering to apply to open private places for subsection 8 (1). This means that littering or dumping litter on someone else's private property is now an offence that can attract an infringement notice. For example, a situation where someone in a public laneway tosses a coffee cup or food wrapper over a fence. This is considered no different to dropping the item on the ground.

Subsection 8 (2) covers a situation where litter exists at a public place or at an open private place but either escapes or is likely to escape. To reflect the potential seriousness of this kind of offence the infringement notice has been increased from \$200 to \$300. This covers a situation where waste on a building site is deposited but is not properly contained and can escape onto a public place or another open private place. This is considered reasonable and proportionate to the nature of the offence.

For this to be appropriate as a strict liability offence with an infringement notice, determining whether something is likely to escape must be straight forward. The Act contains an example about building waste being kept unsecured on a building site and likely to be blown offsite. For the waste to be considered as 'likely to escape' the waste would be of a type that is light weight (such as plastic wrap, empty plastic/paper bags or similar) and not secured (for example, not kept in a waste enclosure or the waste enclosure not being used properly). In either of those cases the waste would be deemed likely to escape and a straight forward matter to determine.

Both subsections 8 (1) and 8 (2) have similar safeguards. This clause is not intended to affect what private citizens can do in their own backyards, unless there is an impact on another person's space, and the safeguards prevent this. This offence does not apply to the occupier of the open private place. This means that a person leaving a food wrapper in the backyard (where it could not escape into another place) would not be committing an offence where a non-occupier would.

An occupier of an open private place is considered to be a resident of the place or someone in the open private place with the permission of a resident.

A safeguard also exists where someone deposits litter at a public place or open private place in a receptacle designed for litter, such as putting rubbish in a bin. This was not previously provided for.

This clause amends the infringement notice for subsection 8 (3) where litter is placed in a receptacle that is not intended for that type of litter due to its size, shape, nature or volume. The infringement notice has been increased to \$300. This is considered reasonable and proportionate to the nature of the offence.

This clause inserts an example of depositing litter in a receptacle which, due to the size, shape, nature or volume of the litter is not intended for that type of receptacle. The example is putting commercial waste (such as restaurant kitchen scraps) or household rubbish into a public bin intended only for general waste such as food wrappers. This is intended to help in understanding and applying the provision.

Section 9 Aggravated littering

The offence of aggravated littering in section 9 has been updated to provide clarity around the offence. This offence now includes a strict liability offence for depositing dangerous items prescribed by regulation with a maximum penalty of 50 penalty units and an infringement notice of \$500. This is considered proportionate and reflects the seriousness of the offence as an aggravated littering offence.

Regulated items have been determined to pose a serious risk to health or safety when they are deposited incorrectly. Items covered include cigarette butts and matches regardless of whether they are lit or extinguished and syringes and any part of a syringe. In respect of a cigarette, it is difficult to determine if a cigarette has been properly extinguished once it has been lit. Cigarettes can appear to be extinguished but rekindle in windy conditions and have the potential to start fires. Therefore, all cigarettes are treated as equally dangerous.

Section 9A Dumping litter

This clause updates section 9A. It sets up an escalation model where the offence penalties for dumping litter increase with the volume dumped. Previously, if a person dumped more than 10 litres, they could attract the highest penalty and no differentiation was made between 11 litres and 1000 litres of litter. This has been updated so that if a person dumps between 200 litres and 1000 litres of litter the maximum penalty is 50 penalty units, imprisonment for 6 months, or both. If a person dumps 1000 litres of litter or more then this will attract a maximum penalty of 100 penalty units, imprisonment for one year, or both. This allows the penalty to more closely reflect the seriousness of the offence and attaches a term of imprisonment.

Section 9A Dumping litter – strict liability

This clause updates section 9B and sets out a framework for strict liability dumping offences where the offence penalties for dumping litter increase with the volume dumped. Previously, if a person dumped more than 10 litres, they could attract the highest penalty and no differentiation was made between 11 litres and 1000 litres of litter. This has been updated so that if a person dumps between 1 and 10 litres of litter they commit a level one offence for which the maximum penalty is 20 penalty units and an infringement notice of \$500. If a person dumps between 10 and 200 litres of litter they commit a level two offence for which the maximum penalty is 35 penalty units and an infringement notice of \$1,000. If a person dumps more than 200

litres of litter they commit a level 3 offence for which the maximum penalty is 50 penalty units and an infringement notice of \$1,500. This allows the penalty to more closely reflect the seriousness of the offence. The levels of offences are set out in clause 8 (discussed above).

Section 9BA Table 9BA

This clause inserts new table 9BA which states the maximum penalties for a level one, two and three offence to correspond with the other amendments in this clause.

Clause 10 Commercial waste – Strict liability

Section 10 (1), penalty

This clause removes the six month imprisonment term for subsection 10 (1) so that the offence is suitable for an infringement notice consistent with the Guide for Framing Offences.

The infringement notice from subsection 10 (2) has also been removed. The provision now provides for a defence of taking reasonable steps to prevent the litter escaping. This introduces a degree of subjectivity which makes it unsuitable as an infringement notice offence. The offence will, however, remain as strict liability.

Clause 11 Offences about vehicle loads

Section 11 (1) (b)

This clause inserts the term ‘or escape’ into the provision for uncovered loads. This both extends and clarifies the criteria for which an offence is committed. The definition of ‘dislodged’ is not included in the dictionary within the Act as the ordinary dictionary meaning is considered sufficient.

The definition of ‘escape’ is contained in the dictionary within the Act. In that context it is broader than the definition of ‘dislodge’ and includes ‘into or onto a public place’. This clarifies that the litter must part with, or be likely to part with, the vehicle not just move away from its original lodging before an offence is committed.

Clause 12 Section 11 (1), Penalty

This clause removes the six month imprisonment term for subsection 11 (1) so that the offence is suitable for an infringement notice consistent with the Guide for Framing Offences. The infringement notice for this offence is increased to \$1,500. This is considered reasonable and proportionate to the nature of the offence, which can pose serious risk to roads users when items escape from vehicles and result in significant litter and waste being deposited along roadways where vehicle loads are not contained.

Clause 13 Section 11 (2) (b)

This clause inserts the term ‘or escape’ into the provision for uncovered loads. This both extends and clarifies the criteria for which an offence is committed. The

definition of 'dislodged' is not included in the dictionary within the Act as the ordinary dictionary meaning is considered sufficient.

The definition of 'escape' is contained in the dictionary within the Act. In that context it is broader than the definition of 'dislodge' and includes 'into or onto a public place'. This clarifies that the litter must part with, or be likely to part with, the vehicle not just move away from its original lodging before an offence is committed.

Clause 14 Section 11 (2), new example

This clause adds a new example to section 11 to clarify what is an offence under this section. The example indicates that garden clippings are considered litter consistent with section 7, a trailer is considered to be a vehicle in accordance with the definition in the *Road Transport (General) Act 1999* and that if the clippings are not covered or strapped down then they are likely to escape and hence an offence is committed.

Clause 15 New Section 11A

This clause introduces a new offence for inappropriately storing construction materials, such as building materials, on a site which could escape and become litter. This new offence has a maximum penalty of 20 penalty units. This is a strict liability offence and has an infringement notice of \$500 attached.

Some items on building sites which are used as building components and therefore would not be considered to be litter, have been known to become litter and cause significant environmental and amenity issues. This clause introduces new section 11A which specifically deals with 'unsecured construction materials' to allow proactive enforcement before these materials necessarily become litter.

This provision is only intended to cover items which are lightweight and have the potential to be removed from a site other than being moved. For example, items which can be blown off a site in strong winds. It is not intended to catch heavy items such as bricks, timber and tools. An example about foam waffle pods has been provided for clarity. These are used in the slabs of buildings and while being kept on site may not fit the definition of litter. However, they are light weight and can easily blow offsite in strong winds, break apart and become litter. They can have negative environmental impacts, as well as amenity impacts.

Clause 16 Section 13 heading

This clause amends the heading of this section to be 'Placing advertising material on motor vehicles, buildings and any other fixed structures.' This reflects the expansion of this provision to fixed structures such as buildings, bus stops and light poles as well as motor vehicles.

Clause 17 Section 13 (1) to (4)

This clause expands section 13 to include advertising material, which includes stickers and posters as well as leaflets on buildings and other structures such as light poles and bus shelters. The maximum penalty for both placing unauthorised advertising leaflets and arranging for or authorising the distribution of such leaflets is

20 penalty units with an infringement notice of \$200. This is considered reasonable and proportionate and reflects the seriousness of the offence, which can result in health, environmental and amenity impacts.

A safeguard has been included so that an offence is not committed if the person placing the advertising material has the consent of the occupier of the building or the owner of the structure.

An example is included for clarity, which is the placing a sticker on a traffic signal or other public infrastructure. This indicates that it is not just vehicles covered under this offence and that a sticker is considered to be litter under this provision.

Clause 18 New Section 13A

This clause introduces a new offence for an incidental vehicle related offence which occurs where offences are committed in such close proximity to a vehicle that it is appropriate to use the vehicle to take enforcement action. This includes an offence committed either near a vehicle, before entering a vehicle or after exiting a vehicle. An incidental vehicle offence is different to a vehicle related offence in that the vehicle is not actually used in the process of committing the offence, however it is in such close proximity to justify using the registration details of the vehicle to identify the offender and issue an infringement notice.

This offence will have the same effect as a vehicle related offence with respect to issuing an infringement notice and can only apply to strict liability offences. An example of this is where a person drops a cigarette butt on the ground before entering a car and driving off. In most instances an authorised person should attempt to stop the person and inform them that an offence was committed. However, this provision can be used if a person refuses to give their name before driving off or in the situation where the authorised person cannot stop the offender or does not feel safe to do so. Authorised persons under the *Litter Act 2004* are regularly in the field without a police officer, or alone. The same provisions for identifying the offender and issuing fines for a vehicle related offence under the *Magistrates Court Act 1930* are available.

Although dumping litter is included as an incidental vehicle offence it is intended that this is only for small items such as cigarettes that would normally be carried on a person. The situation where large items are carried in a car and then a person gets out to deposit/dump the litter would be classified as vehicle related offence and not an incidental offence because the vehicle is used to carry out an element of the offence.

The *Magistrates Court Act 1930* allows infringement notices to be issued to the registered owner of a motor vehicle as determined by the registration details of the vehicle. When in control of a vehicle a driver has responsibility for the passengers within the vehicle and their behaviour. This, however, does not apply once the passengers are outside the vehicle. Therefore, safeguards have been introduced that only the driver of a vehicle can be issued an infringement notice under an incidental vehicle offence. This prevents a driver receiving a fine if a person drops or deposits litter and then gets in the passenger seat before the vehicle is driven away.

This safeguard also protects drivers of public transport vehicles with respect to the actions of their passengers before entering and after leaving the vehicle.

Clause 19 Request to remove litter

Section 20 (3), penalty

This clause increases the maximum penalty amount for not complying with a request to remove litter from 10 penalty units to 20 penalty units and introduces an infringement notice of \$300. Not complying with a request to remove litter is a serious offence, and the infringement penalty is considered proportionate to this.

Clause 20 Notice to remove etc litter

Section 21 (2), new note

This clause inserts a new note which indicates that this is a reviewable decision.

Clause 21 Section 21 (5) and (6)

This clause removes section 21 (5) and (6). This information has been moved to the reviewable decision table.

Clause 22 Section 21 (7), penalty

This clause increases the penalty for not complying with a notice to remove litter to 20 penalty units. It is a strict liability offence and a new infringement notice is introduced of \$300. Not complying with a notice to remove litter is a serious offence and the infringement penalty amount is considered proportionate to this.

Clause 23 Section 24

This clause removes section 24. This information has been moved to new section 24X reviewable decision notices.

Clause 24 New subdivision 4.3.3

This clause introduces a new escalating framework for dealing with significant litter on an open private place that causes an amenity impact.

Section 24BA Meaning of amenity impact

This clause inserts a new section which sets out the circumstances where an amenity impact exists.

This provision is intended as a mechanism for remedying situations where large amounts of what a reasonable person would consider litter have been accumulated at a private premise. This amendment applies where the activity is impacting on the occupiers of the surrounding land, being either public or private place, in terms of wellbeing and the proper use and enjoyment of that place.

The intent of section 8 of the *Litter Act 2004* is not intended to police what people do on their own private property. Section 24BA does restrict what can be done on

private property, however, it is only intended to be used in the most extreme cases where the activities taking place at an open private place are having a significant impact on the surrounding users of the land. This section provides a path for the ACT Government to intervene in these cases, firstly by helping the occupier of the place where the amenity impact offence is taking place to reduce the impact and escalating attempts to solve the problem before issuing an abatement order where all other attempts to remedy the problem have failed.

Section 24BA includes an example of what might be classified as an amenity impact circumstance. It uses deteriorated cars (lots of rust, windows broken) which have not moved for a significant period of time, and the surrounding area is clearly neglected.

The example included in the Act is a mild example of what this sub division is seeking to address. Hoarding cases often involve the storing of large amounts of litter at an open private place. This may include bulky items such as cars or furniture, or large amounts of organic matter (food, newspapers) or faecal matter where animals are hoarded. In these circumstances, the wellbeing of the person causing the impact should be respected. However, where all attempts to address the circumstance by other means have been unsuccessful, rectification should be available to protect the wellbeing of residents of surrounding properties, and also in some cases the person causing the impact.

There is no penalty associated with causing an amenity impact to ensure that mental health issues are not criminalised. Once an amenity impact circumstance has been identified then social solutions should be investigated before any abatement order proceedings are undertaken. The process which must be taken before an abatement order can be applied for in cases with a mental health impact could be detailed in a code of practice. This code of practice would include, among other things, reference to a cross-directorate working group and the ability to draw on relevant expertise from mental health and other experts.

Only when all attempts to remedy the situation by other means have been unsuccessful should an abatement order be issued as to impact the privacy of the occupier in the least restrictive way.

To ensure that the provisions inserted by this clause lead to abatement orders being applied to the most serious cases, these provisions have several safeguards. There is no criminal penalty for causing the original offence. When an offence is investigated an authorised person has the opportunity to decide that the circumstance in question does not meet the criteria necessary to be classified as an amenity impact circumstance and may suggest options of settling the complaint privately. If an amenity impact circumstance is identified, then an investigation will occur, and the code of practice must be followed in which steps to find a social resolution are investigated before issuing an abatement notice.

If a social solution is not successful an abatement notice may be issued. Before issuing an abatement order, criteria such as any disability, mental or physical capacity, or steps taken by either party to minimise the impact must be considered. If an abatement notice is issued then the person causing the amenity impact circumstance will have the opportunity to give a written submission explaining why they should not have to address the circumstance in question. Only after all these steps are investigated may an abatement order be applied for though the court.

Section 24BB Complaints about amenity impact

This clause sets out the procedure for how a complaint about an amenity impact offence should be made.

This clause also sets out the procedure for responding to a complaint, including that a response should be given in writing to the complainant regarding the decision. Where an amenity impact circumstance is found to be occurring, this is the first step in an escalating process to seek a resolution. At this point the mandatory code of practice developed under section 24ZA must be followed.

Section 24BC Notification about proposed abatement notices

This section sets out the procedure for issuing a show cause notice once an amenity impact circumstance has been identified. This is an escalation step before an abatement notice has been issued which formalises the circumstance and allows the person responsible for the amenity impact to resolve the situation or give a written submission as to why an abatement order should not be given.

Section 24BD Abatement notices

This clause sets out the conditions for when an abatement order can be issued, who it can be issued to, what should be taken into account when determining whether to issue an abatement order and what the abatement order must contain.

If an abatement notice is given it is a reviewable decision under the Act.

This clause includes an example about what reasonable steps might be taken by a person causing an amenity impact to minimise the situation. It builds on the example from 24BA to show that the cars are not necessarily the cause of the problem if the area surrounding the cars is improved and steps are taken by the occupier to reduce the amenity impact to the surrounding areas.

Section 24BE Not giving abatement notice

This clause gives the authorised person an opportunity to not give an abatement notice after taking into account any information given in a written submission made under section 24BD. This is intended as an intermediate step in the process order allowing the person causing the amenity impact to explain the circumstances around the situation or find a resolution before an abatement order is issued.

Section 24BF Abatement notice – extension of compliance period

This clause sets out how the compliance period of an abatement order can be extended by the authorised person or by application of the person given the order.

This clause also sets out that if an application for extension is not granted it is a reviewable decision.

Section 24BG Abatement notice – revocation

This clause sets out how an abatement order can be revoked by an authorised person or by application of the person given the order.

This clause also sets out that if an application for revocation of an abatement order is refused then this is a reviewable decision under the Act.

Section 24BH Abatement orders

This clause sets out what power the Director-General has under this Act to apply for a court order to enforce an abatement order and how it may be implemented. The maximum penalty for not complying with a court imposed abatement order is 50 penalty units. This is considered to be proportionate because of the seriousness of not complying with a court imposed order.

Section 24BI Joint and separate responsibility for amenity impacts

This clause sets out who is responsible for an amenity impact circumstance where more than one person resides at a place where an amenity impact is occurring.

Clause 25 Definitions – pt 4A

Section 24C, definition of *retention area*

This clause omits the definition of a retention area because the term is used in more than one section. Instead, the definition is inserted into the dictionary at the end of the Act.

Clause 26 New parts 4B and 4C

This clause sets out new provisions to deal with abandoned motor vehicles.

Part 4B Abandoned vehicles

This clause inserts provisions which change how abandoned vehicles are managed. Abandoned vehicles are managed as 'objects' under the *Public Unleased Land Act 2013*. A consequence of this is that only objects that are on public unleased land are covered under the *Public Unleased Land Act 2013*. This clause transfers the provisions from the *Public Unleased Land Act 2013* to the *Litter Act 2004* only as it applies to abandoned vehicles. This means that only vehicles that are reasonably suspected to be abandoned may be treated as litter. For example, cars which have not been moved two days after being issued a removal direction, or a car left in a public place with the plates removed, broken windows etc.

This clause does not apply to vehicles which do not appear to be abandoned but are parked inappropriately at a public place.

The most significant change in managing abandoned vehicles introduced by this clause is the definition of a public place. Under the *Public Unleased Land Act 2013*, a public place is defined as Territory unleased land; that the public is entitled to use 'or' is open to, or used by, the public. The definition of a public place is much broader under the *Litter Act 2004* and includes; a road, road related area or any other unleased territory land 'or' a place to which the public, or a section of the public, has access, whether by payment or not.

This definition of a public place now enables vehicles abandoned on leased land such as inside schools or carparks, that are open to the public, to be managed under this Act where previously there was no means to deal with them. Often, these

vehicles become targets of further crime such as arson and will now be able to be appropriately dealt with.

Section 24O

This clause introduces new Section 24O which gives an authorised person the power to enter vehicles that are reasonably suspected to be abandoned. This provision has been included to enable an authorised person to identify an abandoned vehicle and the responsible person where the number plates have been removed or switched, or identification is not possible otherwise. This provision allows an authorised person to enter the vehicle to obtain the identification information for the vehicle, such as the VIN number, which can confirm the identity of a vehicle and the responsible person associated with it. This provision is necessary in the management of abandoned vehicles for cases where vehicles are stolen and have had the number plates removed or switched, or where they have been intentionally damaged. Quick identification in this case can allow a vehicle to be returned quickly or suspects in other crimes to be identified.

An abandoned vehicle should not be entered under this Act for any other purpose than obtaining an identification number/s from the vehicle. Appropriate safeguards have been built in to protect the right to privacy to the greatest extent possible, whilst still achieving the policy intent of the Bill.

Section 24P Direction to remove vehicles from a public place

This clause introduces new section 24P that transfers the provisions to issue a removal direction for abandoned vehicles from the *Public Unleased Land Act 2013*, which applies to all objects on public unleased land, to the *Litter Act 2004* in respect of abandoned motor vehicles. The power to issues removal directions for other objects is still available under the *Public Unleased Land Act 2013*.

Section 24Q Offence – Fail to comply with removal direction

This clause transfers the offence for failing to comply with a removal direction from the *Public Unleased Land Act 2013*, which applies to all objects on public unleased land, to the *Litter Act 2004* for the specific case of abandoned vehicles. The maximum penalty for failing to comply with a removal direction is 20 penalty units with an infringement notice of \$300. This is considered proportionate to the nature of the offence and important in achieving the objects of the Act.

This clause adds a reasonable excuse clause for cases where it is not possible for the person to comply with the notice. For example, where a vehicle is stolen and dumped while the responsible person is overseas and therefore they do not know their car is stolen to report it or cannot act on the removal notice. Simply not getting around to moving a vehicle or not seeing a notice should not be considered a reasonable excuse.

Section 24R Removal of Vehicles on public land by Territory

This section transfers the provisions for removing an abandoned vehicle from a public place from the *Public Unleased Land Act 2013*, which applies to all objects on public unleased land, to the *Litter Act 2004* for the specific case of abandoned vehicles. The power to remove other objects is still available under the *Public Unleased Land Act 2013*.

This clause specifies that a vehicle that is reasonably suspected to be abandoned can be moved from where it has been abandoned. This may be by the failure to comply with a removal notice or because there are obvious signs of abandonment. For example, a vehicle left in a public place with several broken windows or missing plates.

This clause also amends how an abandoned vehicle is removed from a public place. The existing provisions in the *Public Unleased Land Act 2013* require that all vehicles are required to be taken to a retention area and held for seven days once the owner had been contacted before they could be treated as uncollected goods and disposed of under the *Uncollected Goods Act 1996*. This clause will now allow vehicles that are clearly of no value, such as a burnt out wreck, to be disposed of at the discretion of an authorised person by either moving the vehicle to a retention area or to a disposal site for disposal, for example, a resource recovery centre.

This clause includes any abandoned vehicle and includes abandoned vehicles that are causing an obstruction or hazard for people on or near the public place. For a vehicle that is not abandoned or not reasonably suspected to be abandoned, a removal direction must still continue to be issued under the *Public Unleased Land Act 2013*.

Section 24S Disposal of vehicles by Territory

This clause transfers the provisions for disposing of an abandoned vehicle from a public place from the *Public Unleased Land Act 2013*, which applies to all objects on public unleased land, to the *Litter Act 2004* for the specific case of abandoned vehicles. The power to dispose of other objects is still available under the *Public Unleased Land Act 2013*.

24T Damage to be minimised

This clause allows for reasonable damage to occur when exercising powers under this Bill including the power to enter a vehicle.

24U Compensation for exercise of enforcement powers

This clause sets out the procedure for claiming compensation for any loss or damage incurred by an authorised person when exercising powers under this Bill including the power to enter a vehicle.

24V Protection from liability

This clause inserts provisions which protect an authorised person from civil penalty for conduct engaged in exercising powers under this Act.

Part 4C Review and appeals

Under the *Public Unleased Land Act 2013*, issuing a removal direction is a reviewable decision. Section 4C provides the same provisions in respect of abandoned motor vehicles under the *Litter Act 2004*. New sections 24W, 24X, and 24Y set out the procedure for a reviewable decision.

Clause 27

New Section 24Z

This clause introduces provisions which allow a person subject to an abatement order to appeal to the Supreme Court in relation to orders of the Magistrates Court relating to an abatement order or the dismissal of an application for the revocation of an abatement order.

Clause 28 New Section 24ZA

This clause inserts a new section 24ZA which allows for the introduction of codes of practice under the Act. It also mandates the introduction of a 'hoarding code of practice' to outline in more detail what should be considered when determining if an amenity impact offence has occurred and what steps should be taken before an abatement order is issued. By standardising how a case of 'amenity impact' under new Subdivision 4.3.3 is managed once it has been identified it will ensure that all cases are treated equally, that a social solution may be found without resorting to an abatement order and if an abatement order is issued, it is after careful consideration and not an arbitrary attack on the right to privacy.

This clause allows a code of practice to apply, adopt or incorporate an instrument as in force from time to time. The Act, as it relates to hoarding, has been constructed to complement the *Public Health Act 1997*. Therefore, it is foreseeable that instruments developed under one Act may be incorporated into the other.

Research around how best to manage hoarding properties is evolving and consequently policy will also likely change moving forward. Any instrument adopted or incorporated into a code should apply as in force from time to time to reflect any changes in those instruments as the recommended approach evolves.

Clause 29 Section 27

This clause ensures that there remains the potential to introduce a framework for regulating dockless bikes or another type of shared transport scheme, in a similar manner to how shopping trolleys are currently regulated under the Act, if needed in the future. Many cities around the world have had issues with dockless bikes ending up as litter in the urban environment and waterways, similar to issues with shopping trolleys. This is not currently a problem in the ACT but may become one as the popularity of these schemes, the area covered, the number of business involved, and the number of bikes in circulation rise. This provision will allow for a regulatory framework to be set up in the future by regulation if needed.

This clause also increases the maximum penalty available for offences in regulation from 10 to 30 penalty units. Any regulation for shared transport schemes would need to provide a real incentive for an operator to comply with the regulation and this would require some offences to be up to 30 penalty units and have infringement notices attached of up to \$960. This is consistent with the Guide for Framing Offences. This is considered reasonable and proportionate to the nature of potential offences, noting that the highest offence for shopping trolleys is 60 penalty units for retailers not keeping their trolleys inside the precinct. It is foreseeable that a similar provision could be required for keeping dockless bikes inside a predetermined zone

where the scheme is licensed to operate and that this would require a maximum penalty of more than 10 units to be effective.

Clause 30 New Schedule 1

This clause inserts a new Schedule which sets out reviewable decisions. The table includes sections 21 (2) and 24P (2) as reviewable decisions.

Clause 31 Schedule 1, new items 1A to 1C

This clause inserts further reviewable decisions into schedule one. This includes sections 24BD (2), 24BF (1) and 24BG (3). These have been inserted as a separate clause due to the split commencement of the provisions relating to these reviewable decisions.

Clause 32 Dictionary, note 2

This clause inserts the terms 'entity' and 'working day' as terms defined in the *Legislation Act 2001* dictionary.

Clause 33 Dictionary, new definitions

This clause inserts new definitions into the dictionary. The terms 'abatement notice,' 'amenity impact' and 'disability' have been added to assist in applying the Act.

Clause 34 Dictionary, definition of *escape*

This clause includes a new definition of escape which extends the previous definition to include an open private place, consistent with other amendments in this Bill.

Clause 35 Dictionary, new definitions

This clause inserts new definitions into the dictionary. The terms 'level', 'open private place,' 'removal direction' and responsible person have been added to assist in applying the Act.

Clause 36 Dictionary, definition of *retention area*

This clause inserts a new definition into the dictionary. The term 'retention area' has been added to assist in applying the Act.

Clause 37 Dictionary, New definitions

This clause inserts new definitions into the dictionary. The terms 'reviewable decision', 'vehicle,' 'waste,' 'waste collection service' and waste facility have been added to assist in applying the Act.

The terms 'waste', 'waste collection service' and 'waste facility' are used within provisions in the *Litter Act 2004* and the definitions of these terms have also been

included in the Bill by cross referencing to the *Waste Management and Resource Recovery Act 2016*. This is to keep the legislation consistent, avoid ambiguity and capture any changes to the definition of waste.

The term 'waste' is a broad term which appears in the definition of litter and should have a definition included, which is consistent with other legislation dealing with waste. By providing a definition of waste, the definition of litter is further clarified.

PART 3 LITTER REGULATION 2018

Clause 38 New section 2

This clause sets out the items that are considered aggravated littering under section 9(2). This includes syringes and cigarettes. The new infringement notice is \$500. This is considered proportionate and reflects the seriousness and aggravated nature of the offence.

The inclusion of cigarettes (any cigarette) is considered necessary because there is no longer a distinction in the penalty for dropping a lit cigarette compared to an extinguished cigarette. From an operational point of view, it is very difficult to determine if a cigarette butt has been completely extinguished. This is especially true when these can appear extinguished yet still be smouldering internally and potentially re-light in windy conditions. The ACT Emergency Services Agency (ESA) has stated that data from 2011 to date shows that approximately 13% of all landscape (grass and bush) fires have been caused by discarded cigarettes. As such the practice poses a clear risk to public safety, particularly in the unique ACT environment. For this reason, depositing any cigarette is considered equally dangerous unless disposed of in a proper receptacle and should be treated as such.

Clause 39 Section 3 and 4

This clause omits sections 3 and 4 from the *Litter Regulation 2018*. The existing sections 3 and 4 set the volumes of litter which distinguished littering from dumping litter. This has been removed as it is no longer necessary as a new escalating framework has been built into amended section 9 of the Act, where penalties increase with the volume of litter dumped. This improves on the existing framework so that penalties can be more consistent with the severity of the offence.

Part 4 Magistrates Court (Litter Infringement Notices) Regulation 2004

Clause 40 New section 2

This clause adds a new dictionary to the regulation because the terms 'litter' and 'level' are used in the schedule 1 table and should be defined.

Clause 41 **Meaning of *Litter Act***
Section 5

This clause omits section 5 as further amendments have been made in this bill which replace all references to the Litter Act with its full title in accordance with current legislative drafting practice.

Clause 42 **New section 7A**

This clause inserts a new section into the *Magistrates Court (Litter Infringement Notices) Regulation 2004*, which defines offences classified as vehicle related offences for the purpose of issuing infringement notices, using registration details from number plates to identify the responsible person and issue an infringement notice.

Division 3.8.3 of the *Magistrates Court Act 1930* provides additional powers for issuing infringement notices for offences listed as vehicle related offences. A vehicle related offence is defined as an infringement notice offence that –

- (a) involves a vehicle; and
- (b) is declared by regulation to be an offence to which division 3.8.3 (of the *Magistrates Court Act 1930*) applies.

The power to issue fines to people observed littering was an intended outcome of the *Litter Act 2004*. However, no offences in the existing Act are declared by regulation as a vehicle related offence. The offences which will now be declared as vehicle related offences are set out in schedule 2 of the *Magistrates Court (Litter Infringement Notices) Regulation 2004*, inserted by Clause 44 of this Bill.

This clause introduces safeguards around vehicle related offences for drivers of public transport vehicles where an offence is committed by a passenger. This is because it is considered unreasonable for the driver of such vehicles to be responsible for all passengers.

A vehicle related offence must be a strict liability offence and will have the same infringement notice attached to the offence as when it is not a vehicle related offence.

Clause 43 **Schedule 1**

This clause updates the existing Schedule 1 to reflect the changes made to the penalty units and infringement notice amounts as outlined at the relevant offences above.

Clause 44 **New schedule 2**

This clause inserts a new schedule which sets out which offences in the Act are vehicle related offences. An explanation of vehicle related offences can be found at clause 42.

Clause 45 New dictionary

This clause inserts a new dictionary which defines the terms 'level' and 'litter'.

Clause 46 Further amendments, mentions of *Litter Act*

This clause omits the words 'Litter Act' and substitutes '*Litter Act 2004*' in section 3 and in sections 6 to 12. This is the correct naming of the document in line with drafting standards.

PART 5 PUBLIC UNLEASED LAND ACT 2013

**Clause 47 Direction to remove objects from public unleased land
Section 98 (2) (c)**

This clause makes consequential amendments to the *Public Unleased Land Act 2013* which changes how abandoned vehicles are managed. This clause removes the powers for managing abandoned vehicles from the *Public Unleased Land Act 2013* to the *Litter Act 2004*. All other objects that are managed by the *Public Unleased Land Act 2013* are unaffected and can still be removed and regulated under this section.

**Clause 48 Removal of objects by Territory
Section 105 (1) (b), note**

This clause removes the word abandoned from the note after section 105 (1) (b). This is consistent with removing the powers for managing abandoned vehicles from the *Public Unleased Land Act 2013* to the *Litter Act 2004*.

Clause 49 New section 105 (1A)

This clause makes it clear that section 105 does not apply if the object is an abandoned vehicle because this is now covered under the *Litter Act 2004*.

PART 6 UNCOLLECTED GOODS ACT 1996

**Clause 50 Goods deemed uncollected
New section 5 (2)**

This clause inserts a new section 5 (2) which sets the criteria for when section 5 (1) does not apply. This section states that section 5 (1) does not apply for cases where vehicles are abandoned because these will now be managed under the *Litter Act 2004*.

Clause 51 **Goods lost or abandoned on public or unleased land**
Section 14 (2) (c)

This clause substitutes section 14 (2) (c) to remove the reference to abandoned vehicles because these will now be managed under the *Litter Act 2004*.

Clause 52 **Sections 22 to 24**

This clause makes consequential amendments to the *Uncollected Goods Act 1996* to introduce new timeframes for disposal of abandoned vehicles. The *Uncollected Goods Act 1996* treats all uncollected items equally. Items of significant value must be held for three months before disposal, items of low value must be held for one month and items of no value must be held for one week. This system is not appropriate or effective for dealing with abandoned vehicles, particularly given that in most cases the original owner has no intention of reclaiming their goods.

These amendments allow abandoned vehicles to be treated separately to other goods to reduce the holding periods. The holding periods have been changed so that vehicles of significant value are required to be held for 14 days, vehicles of low value will be required to be held for seven days and vehicles of no value (defined as something with a net value of \$20 or less), for example a car which has been burnt out can be disposed of at the discretion of an authorised person by either being taken to a retention area or to a disposal site and disposed of immediately.

Section 22 Goods of no value

This section reduces the holding time before a vehicle of no value (< \$20 net value) may be disposed of from one week to immediately, noting that new clause 26 gives the option for a vehicle of no value to be taken to a retention area or disposed of immediately.

Section 23 Goods of low value

This section reduces the holding time before a vehicle of low value (< \$500 net value) from one month to immediately. It is noted that new clause 26 requires a vehicle of low value to be taken to a retention area and held for seven days after notice has been given to the responsible person before it can be disposed of under the *Uncollected Goods Act 1996*.

Section 24 Goods of significant value

This section reduces the holding time before a vehicle of significant value (> \$500 net value) may be disposed of from 3 months to 14 days.

It is noted that new clause 26 requires a vehicle of significant value to be taken to a retention area and held for seven days after notice has been given to the responsible person before it can be disposed of under the *Uncollected Goods Act 1996*. This means a vehicle of significant value would be stored for a total of 21 days before it can be disposed of.

**Schedule 1 Road Transport (Safety and Traffic Management) Act
1999-Consequential Amendments**

Clause [1.1] Section 40 (a) (ii)

This clause makes consequential amendments to the *Road Transport (Safety and Traffic Management) Act 1999*. It omits the word abandoned from section 40.