

2019

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

Litter Legislation Amendment Bill 2019

SUPPLEMENTARY EXPLANATORY STATEMENT

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

Introduction

This supplementary explanatory statement relates to the amendment 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 statement must be read in conjunction with the amendment and 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.

Overview of the Bill

The purpose of the government amendment in the Bill is to address comments received from the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in Scrutiny Report 32, make minor technical corrections and clarifications. The Bill will provide additional safeguards to the offence of aggravated littering to make it consistent with the other offences for depositing litter. It will also include additional safeguards to guide what actions an authorised officer may take when entering an abandoned vehicle.

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.

Right to be presumed innocent until proven guilty

The amendments included in the Bill at section 9 for the offence of aggravated littering provide additional safeguards that will provide protection for people in cases where litter is deposited by accident or by an approved means. This will make the provisions for aggravated littering less restrictive on the right to be presumed innocent until proven guilty. This is particularly important for the strict liability offence.

Right to privacy

The amendments included in the Bill at section 24O for the power to enter an abandoned vehicle, provide safeguards which further protect the vehicle's owner's right to privacy whilst acting as guidelines as to what actions an authorised person may take when exercising this power. This includes that an authorised person may only take the steps reasonably necessary to obtain the information needed to identify the vehicle or responsible person for the vehicle and must not examine anything else in the vehicle that is not relevant for identifying the vehicle or responsible person. That an authorised person may only permanently remove items which are likely to cause harm or damage to the vehicle, a person or an animal, and that an authorised person must not disclose any information, other than the identification information, obtained while exercising the power to enter an abandoned vehicle. This amendment

will make the provisions for entering abandoned vehicles less restrictive on a person's right to privacy.

PROVISIONS OF THE BILL

1

Clause 3 (1),

Page 2, line 24—

This amendment removes the Litter Regulation 2018 from the list of legislation that is amended by the Bill.

2

Proposed new clause 3A

Page 2, line 28—

This amendment repeals the *Litter Regulation 2018*.

3

Clause 9

Proposed new section 9 (2)

Page 6, line 26—

This amendment substitutes section 9 (2). The new section 9 (2) contains a list of items, which, when deposited would be considered aggravated littering. These items were previously listed in the Litter Regulation 2018 and have been transferred to the *Litter Act 2004*. Previously, the Bill also contained a power to prescribe items by regulation to add items in the future. This power is removed by this amendment. This amendment was made in response to comments made by the Scrutiny Committee.

This amendment also introduces two new safeguards for aggravated littering to make this offence consistent with the other provisions for depositing litter.

The first additional safeguard introduced by this amendment provides protection in the case litter is released accidentally. This provision will disapply the offence if the depositing of the litter is accidental and the person takes all reasonable steps to retrieve the litter. For example, a person trips over and drops cigarette butts they have been carrying and then picks them up again. This safeguard will not apply however in a situation where, for example a person drops a cigarette butt intentionally, then picks it up when approached by an authorised officer, because the depositing of the litter was not accidental.

The offences of littering and dumping litter in the Bill have provisions for the accidental release. The addition of this provision would make the aggravated littering offence consistent with other littering based offences in the Bill and not criminalise genuine accidents.

The second additional safeguard introduced by this amendment is to allow for safe or correct means of disposal. This provision will disapply the offence if the litter is deposited at a public place in a manner that is safe or correct, such as using a receptacle provided and designed for litter of that nature, or in accordance with advice with a public servant performing their duties. An example of this would be placing a syringe in a dedicated sharps bin provided at public places.

This provision will also provide for cigarette butts, matches and similar item to be disposed of, once extinguished, in mixed waste and placed in a public place for collection or depositing of mixed waste containing these items at a waste transfer station or landfill. Syringes have been specifically excluded from this because they should not be disposed of in mixed waste as this is potentially dangerous.

4

Clause 9

Proposed new section 9 (4)

Page 7, line 3—

This amendment inserts a new section 9 (4). The new section sets out the definition of a syringe for this section. This definition that relates to the items listed in section 9 (2) was previously in the *Litter Regulation 2018* and has been transferred to the Litter Act 2004 to assist in reading Bill.

5

Clause 26

Proposed new section 24O (2)

Page 24, line 15—

This amendment provides safeguards which balance the ability of an authorised person to obtain the necessary identification information and the privacy of the owner of the vehicle. These safeguards also act as guidelines as to what actions an authorised person may take when exercising this provision. This new amendment stipulates that an authorised person may only take reasonable steps to identify the vehicle. This can include moving or removing items inside the vehicle to access the required information however the officer should not examine items in the vehicle which are not relevant to identifying the vehicle or responsible person. This means personal items and belongings should not be examined. Items which are required to be removed from the vehicle to access the identification information should be

placed back inside the vehicle once the information has been obtained.

Also, Items may only be permanently removed from the vehicle if they are perishable in nature and their decomposition may damage the vehicle or pose a danger to the vehicle or person attempting to enter or remove it. For example, food items that will spoil, fill the vehicle with a foul odour or damage/rot upholstery or chemical or explosive material which may harm the person or damage the vehicle during transport to a retention area.

The amendment also includes a provision which prevents authorised persons from disclosing information they may have come across while exercising the power to enter an abandoned vehicle.

This amendment was made in response to comments made by the scrutiny committee.

6

Clause 37

Proposed new dictionary definition of waste

Page 34, line 19—

This amendment omits the existing definition of waste and inserts a new definition. The definition of waste has been included in the Bill by cross referencing to the Waste Management and Resource Recovery Act 2016 (WMRR Act). This definition is being amended to clarify that the intended definition of waste is the global definition set out in section 10 of the WMRR Act and not the definition in section 63. This was an oversight in the original drafting and has been amended in response to comments from the Scrutiny Committee.

7

Part 3

Page 35, line 1—

This amendment omits part 3 of the Bill which relates to the *Litter Regulation 2018*. This is because the information this section about the prescribed kind of litter for aggravated littering has now been transferred into the *Litter Act 2004*. This amendment was made in response to comments made by the Scrutiny Committee.

This amendment results in the *Litter Regulation 2018* containing no information. The result of this is that the *Litter Regulation 2018* is repealed.