

**1993**

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

**LITTER (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for Urban Services**

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## **LITTER (AMENDMENT) BILL 1993**

The *Litter Act* 1977 ('the Principal Act') establishes various littering offences and also provides a method for enforcing the Act. The offences in the Principal Act are divided into two categories. The less serious offences, such as the offence in section 3 of the Principal Act of depositing litter in a public place (other than litter which is likely to cause injury to persons or damage to property), may be dealt with through the use of litter notices - also referred to as 'on-the-spot' fines. More serious offences, such as the offence in section 7A of the Principal Act of depositing or abandoning a dangerous container (for example a refrigerator) in a public place, may be dealt with only through the Courts.

The Litter (Amendment) Bill 1993 amends the Principal Act to:

- . increase the range of offences that may be dealt with by way of litter notices and make some changes in the administrative arrangements specified in the Act in relation to litter notices;
- . introduce a new offence in anticipation of problems that may arise following the introduction of tip fees for commercial and industrial users; and
- . update the penalties for contravention of the Act;
- . renovate such language as is sexist in the Act so as to render it gender neutral.

### *Financial considerations*

It is expected that the amendments will result in some additional revenue.

Details of the Bill are as follows.

## LITTER (AMENDMENT) BILL 1993

### Formal clauses

*Clause 1, 2 and 3* are formal clauses providing for the citation of the Bill once enacted, commencement and the Principal Act.

### Litter notices

The Bill amends the Principal Act so that all offences, other than offences relating to the provision of information to inspectors or a police officer, may be dealt with by way of a litter notice. The decision in any case to proceed with a litter notice or to commence a prosecution for an offence will depend on the particular circumstances such as the gravity of the offence, the extent of any damage that the litter may have caused, the likelihood of a repeat offence etc.

*Clause 4* amends the interpretation section of the Principal Act. The definition of "littering offence" is expanded by this clause so that any offence under the Act, apart from a section 9 offence, may be dealt with by way of a litter notice. Clause 4 also inserts two new definitions. The term "administrative charge" is used in relation to litter notices where the prescribed penalty is not paid within 28 days after a litter notice is served and a second, and final, notice is served. If the Minister determines an amount different from the specified \$25 then that determination is disallowable by virtue of new section 11C which is inserted by clause 15.

*Clause 13* amends section 10 of the Principal Act so that the litter notice that is issued under section 10 contains, in addition to the information that is currently required, a notification that failure to pay the prescribed penalty within 28 days will result in the person on whom the notice is served incurring a liability for the administrative charge in addition to the prescribed penalty. Section 10 is also amended to provide that the litter notice will be in a form approved by the administrative head.

Subsections 10(4) to (9) of the Principal Act are also repealed by clause 13. These subsections deal with the prescribed penalty under the Principal Act, time allowed for payment of the prescribed penalty and other procedural matters following the service of a litter notice. The provisions relating to time periods and procedural matters have been superseded by simpler provisions inserted by subclause 13(g) and

clause 14 of the Bill. The "prescribed penalty" for litter notices will be specified in regulations to be made under section 12 of the Act.

*Clause 14* provides for the insertion of five new sections after section 10 of the Principal Act. These new sections, in combination with section 10, contain the substantial elements of the new litter notice arrangements.

New section 10A provides that where a litter notice has been served on a person under section 10 and the prescribed penalty has not been paid within the 28 day period allowed then a second "final" notice may be served on the person. This final notice is a notification that the person has incurred an additional administrative charge for non-payment of the prescribed penalty and advises the person that failure to pay the prescribed penalty and the administrative charge within a further 14 days may result in prosecution for the alleged littering offence.

New section 10B provides a formal mechanism by which a litter notice issued under section 10 or a final notice issued under new section 10A may be withdrawn at any time. Withdrawal of the notice means that no further proceedings will be taken in respect of the alleged offence. This section is designed to provide a formal notification to the person on whom it is served so that, where it is decided for whatever reason that a matter will not be taken any further, the person is not left with the possibility of prosecution lurking vaguely in the unspecified future.

New section 10C provides for the manner in which notices under sections 10, 10A or 10B may be served.

New section 10D sets out the liability of a person in respect of actions arising from the various notices under sections 10, 10A and 10B. This section basically gives effect to the information that is contained in the notices. Section 10D specifically provides that where a person pays the prescribed penalty (and the administrative charge if applicable) then that person's liability in respect of the alleged offence is taken to be discharged, no further proceedings may be taken and a person cannot be regarded as having been convicted of an offence to which a notice relates.

New section 10E expressly preserves the option to prosecute a person for an alleged offence. Subject to new section 10D, a prosecution may be instituted at any point. It is not necessary that the notice option under sections 10 and 10A be exhausted before a prosecution is commenced.

*Clause 15* inserts new sections 11A, 11B and 11C into the Principal Act.

New section 11A sets out the evidentiary presumption arising from certain documents signed by the administrative head or an authorised officer.

New section 11B provides that the maximum penalty that the Court may impose on a body corporate that is convicted of an offence against the Act is five times the pecuniary penalty that is otherwise specified in the Act. This section recognises that a body corporate has more potential gains from breaching the Act and a greater capacity to offset those gains against a lower penalty.

New section 11C provides that the Minister may determine the administrative charge in relation to a final notice for the purposes of the Act. Any such determination of the Minister is subject to disallowance in the Legislative Assembly.

*Clause 16* inserts a new subsection into section 12 of the Principal Act. This new subsection limits the penalty that can be prescribed by regulations to a maximum amount of \$1000 in line with other Territory legislation.

*Clause 17* is a savings provision which preserves the discretionary power to extend the period for payment in subsection 10(5) of the Principal Act. Subsection 10(5) is repealed by clause 13 of the Bill. It is necessary to preserve this discretionary power where a litter notice is served under section 10 of the Principal Act and the 14 day period for payment expires after the amendments contained in this Bill commence.

#### **New offence**

*Clause 6* provides for the insertion of a new offence into the Principal Act. New section 3A provides that it is an offence to deposit commercial waste in or on a public place. The offence in relation to commercial waste carries a higher potential

penalty than the other littering offences because of the potential quantities and nature of commercial waste.

*Clause 4* amends the interpretation section to insert a definition of "commercial waste". The inclusion is necessitated by the use of the term in the offence in new section 3A of the Act.

### **Increased penalties**

*Clauses 5, 7, 8, 10 and 12* increase the penalties for various littering offences in line with more recent legislation.

### **Clarifications**

*Clause 7* clarifies the offence in section 4 of the Principal Act by substituting the concept of arranging, containing, fastening or covering a load, as opposed to taking "reasonable steps", to prevent it from falling or being blown off a vehicle during transport.

*Clause 9* provides for the repeal of section 6 of the Principal Act. Section 6 provides that it is an offence to deposit garbage in a place other than a public tip. "Litter" is defined in section 2 of the Principal Act to expressly include "garbage" so that the section 6 offence is really a subset of the section 3 offence of depositing litter in a public place. The repeal of section 6 of the Principal Act removes the ambiguity that arises from having two sections dealing with what is essentially the same offence.

*Clause 12* amends section 9 of the Principal Act so that the reasonable excuse defence is only applicable to refusal or failure to furnish a name or address or refusal to produce evidence of identity. It is not appropriate to provide this defence for the offence of furnishing a false name or address and section 9 is slightly rearranged by clause 12 as a consequence.

### **Sexist language**

*Clauses 10, 11 and 12* amend the Principal Act so that the language of the Act is gender neutral. Clause 10 also slightly rephrases section 7A in accordance with current drafting practice.