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

**DANGEROUS SUBSTANCES AND LITTER (DUMPING)
LEGISLATION AMENDMENT BILL 2008**

EXPLANATORY STATEMENT

**Circulated by authority by
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DANGEROUS SUBSTANCES AND LITTER (DUMPING) LEGISLATION AMENDMENT BILL 2008

Overview

The Dangerous Substances and Litter (Dumping) Legislation Amendment Bill 2008 (the Bill) amends a number of Acts and Regulations with a view to decreasing incidents of illegal dumping and to facilitate the recovery of costs involved in removing illegally dumped material.

The Bill amends:

- the *Dangerous Substances Act 2004*;
- the *Litter Act 2004*;
- the *Magistrates Court (Litter Infringement Notices) Regulation 2004*;
- the *Road Transport (General) Regulation 2000*; and
- the *Road Transport (Safety and traffic Management) Act 1999*.

The Bill:

- clarifies the operation of the *Dangerous Substances Act 2004*, particularly in relation what is meant in that Act by the handling of dangerous substances;
- increases some penalties under the *Litter Act 2004* and creates new offences in that Act targeted at dumping;
- facilitates the recovery of the cost of removal and rectification of illegally dumped material, through new provisions in the *Litter Act 2004*; and
- permits the Police, in limited circumstances, to impound vehicles used in the commission of offences under the *Litter Act 2004* and the *Dangerous Substances Act 2004*. This is done by extending the operation of current vehicle impounding provisions under the Division 2.3 of the *Road Transport (Safety and Traffic Management) Act 1999*.

Notes on Clauses

Part 1 Preliminary provisions

Clause 1 Name of Act

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

Clause 2 Commencement

This clause explains that the proposed Act will commence on a day fixed by the Minister. This method of commencement has been chosen to allow for a period of time to raise the public's awareness to the new provisions.

Part 2 Amendments to the Dangerous Substances Act 2004

Clause 3 Legislation Amended by Part 2

This clause is a formal provision to identify that the legislation to be amended by this Part of the Bill is the *Dangerous Substances Act 2004* (the DS Act).

Clauses 4 and 5 New examples

These clauses insert new examples into sections 43 and 45 of the DS Act. They provide examples where dumping of dangerous substances (as defined by that Act) would constitute offending behaviour under those sections. Section 23 of the DS Act imposes a general safety duty on everyone handling dangerous substances anywhere. Handling a dangerous substances includes disposing of the substance (see section 11.) The purpose of the examples is to make clear that disposing of a dangerous substances includes the act of dumping of the substance.

Part 3 Amendments to the Litter Act 2004

Clause 6 Legislation Amended by Part 3

This clause is a formal provision to identify that the legislation to be amended by this Part of the Bill is the *Litter Act 2004* (the Litter Act).

Clause 7 Definition of escape - note

This clause adds a note to section 8(2) of the Litter Act to advise that “escape” is defined in the dictionary.

Clause 8 Removal of definition of escape from section 8 of the Litter Act

This clause removes the current definition of “escape” from section 8(6) of the Litter Act. The definition is moved to the dictionary at the end of the Act (see clause 21 of the Bill).

Clause 9 Aggravated littering (section 9, penalty)

This clause increases the penalty for aggravated littering under section 9 of the Litter Act from 50 penalty units, imprisonment for 6 months or both, to 100 penalty units, imprisonment for 1 year or both.

Clause 10 New sections 9A to 9C

This clause inserts three new offence provisions into the Litter Act.

New section 9A establishes new offences of intentionally dumping litter where the volume of the litter dumped is greater than an amount to be prescribed in regulation. The maximum penalty is 100 penalty units, imprisonment for one year, or both.

The new offences can be distinguished from the lesser offences contained in section 8. Section 8 offences are characterised by the act of “depositing” litter, whereas the new offences are characterised by the act of “dumping” litter. Although the word “dump” is not defined in the Act, the word suggests a more substantial act than mere depositing (which the Act defines as “the act of parting with possession with the litter.”)

The Macquarie dictionary defines the word “dump” to include:

to throw down in a mass, fling down or drop heavily;
to empty out, as from a cart, by tilting;...
to unload;

The provisions are intended to cover more substantial forms of “littering” such as abandonment of quantities of soil or builder’s rubble, disused whitegoods or other

electrical appliances. The offences would not cover the dropping of small items such as wrappers and cigarette butts, which would continue to be covered by section 8.

Section 9B establishes an alternative strict liability offence of dumping litter, with a lower penalty (50 penalty units) than section 9A. The Government is of the view that a strict liability offence is warranted. The physical element of the offence, the dumping of a quantity of litter, is the critical feature of the offence.

Section 10 of the Litter Act already provides for a strict liability offence of depositing commercial waste at a public place. New section 9C mirrors that offence, but with a higher penalty (100 penalty units). For this reason this new offence is not a strict liability offence.

Clause 11 Section 10 heading

This clause changes the heading of section 10 of the Litter Act to clarify that the existing offence under that section is a strict liability offence.

Clause 12 Division 4.3 heading

This clause changes the heading of Division 4.3 of the Litter Act to “Dealing with litter” in recognition that the division deals not only with removal of litter, but also with restoration of areas damaged by litter.

Clause 13 Subdivision 4.3.1 heading

The current division 4.3 of the Litter Act is to be split into two subdivisions. This clause inserts a new heading for new subdivision 4.3.1.

Clause 14 Section 21 heading

This clause changes the heading to section 21 of the Litter Act to recognise that the operation of the section is being widened to cover not only removal of litter, but also restoration of public areas that have been affected by litter. See the notes to clause 15 of the Bill.

Clause 15 New section 21(4)

This clause replaces existing section 21(4) of the Litter Act. Existing section 21 deals with the issuing of a notice to a person who has littered to remove or dispose of litter.

There may be circumstances where the act of littering, particularly when it involves larger amounts of material, damages a public place. For example, a trailer load of rubble dumped in bushland might kill the grass or plants on which it has been deposited. The notice can require that the area be restored, in addition to the removal of the rubble. A notice to restore under this section can only be issued for damage to public places.

Clause 16 Section 22 heading

This clause changes the heading to section 22 of the Litter Act to recognise that the operation of the section is being widened to cover not only removal of litter, but also restoration of public areas that has been affected by litter. See the notes to clause 15 of the Bill.

Clause 17 New section 22(2)

This clause replaces existing section 22(2) of the Litter Act. That section permits the chief executive responsible for the Litter Act to arrange for the removal or disposal of litter. The provision is to be widened to include arranging for a public place that has been affected by littering to be restored. See the notes to clause 15 of the Bill.

Clause 18 **New section 23**

This clause replaces the existing section 23 of the Litter Act, other than the note at the end of the section. The current provision establishes that a person who fails to comply with a notice under section 21 must pay the Territory's reasonable costs. The provision is to be widened to include arranging for a public place that has been affected by littering to be restored. See the notes to clause 15 of the Bill.

Clause 19 **AAT review**

This clause amends the cross-reference to section 21 of the Litter Act to recognise that the heading for that section has been changed. See clause 14 of the Bill.

Clause 20 **New subdivision 4.3.2**

This clause inserts a new subdivision 4.3.2 into the Litter Act to provide an alternative to the current Division 4.3 (sections 20-24 of the Act). Under the current provisions the Territory can seek the recovery of the cost of removal of litter, however it must first identify the person who caused the littering and issue them with a notice to remove the rubbish. That person then has 28 days to challenge the notice in the AAT. Only at the expiry of the appeal period can the Territory remove the offending material and seek compensation.

The new subdivision (comprising sections 24A and 24B) recognises that there may be instances when the Territory cannot delay removing the litter, particularly if it is capable of causing harm, or if it is in the public interest to immediately remove the rubbish. Examples where it would be in the public interest to remove the rubbish include where the rubbish is, unsightly, noisome, blocking access to public places, or encouraging other people to also deposit litter in the same place.

There may be situations where the identity of a litterer is not immediately known, but subsequently they are identified. In those situations it is appropriate that the Territory should be able to recoup the cost of removal from the litterer should they be subsequently identified.

New section 24A thus permits the Territory to arrange for the removal of litter in a public place and to restore the area to the state it was in immediately before the littering occurred. Section 24B then permits the Territory to recover the cost of removal and restoration from the perpetrator without issuing a notice to rectify the damage, provided the removal and restoration done under section 24A(2) satisfied the criteria set out in section 24A(1)(b).

The provisions do not stop the Territory from removing litter or rubbish from a public place at any time, irrespective of the circumstances under which it is deposited, however if the conditions in subsection 24A(1)(b) have not been satisfied, it would not be possible, under the Act, to recover costs should the perpetrator subsequently be identified. In this sense, the new provisions are no different from the current sections 20-24.

Clause 21 **Definition of "escape"**

This clause inserts the definition of escape, formerly in section 8(6) into the dictionary at the end of the Litter Act. (See also clauses 7 and 8 of the Bill)

Clause 26 Legislation Amended by Part 6

This clause is a formal provision to identify that the legislation to be amended by this Part of the Bill is the *Road Transport (Safety and Traffic Management) Act 1999* (the Safety and Traffic Management Act).

Clause 27 New section 10AA

This clause inserts a new section 10AA before section 10A in the Safety and Traffic Management Act. The section provides a definition of “relevant offence” for the purposes of division 2.3 of that Act. The definition refers to the offences in sections 5A, 5B and 8 of the Act (the offences for which division 2.3 already operates) and adds to them the following:

- offences under part 3.2 of the *Dangerous Substances Act 2004*; and
- offences under section 9, 9A and 9C(1) of the *Litter Act 2004*.

Clauses 28-32 Inserting references to “relevant offence”

These clauses amend the following provisions of division 2.3 of the Safety and Traffic Management by replacing the references to sections 5A, 5B and 8 of the Safety and Traffic Management Act (the offences for which division 2.3 already operates) with the new definition of “relevant offence” created by new section 10AA:

clause 28 section 10B(1);
 clause 29 section 10B (6)(a);
 clause 30 section 10B(10);
 clause 31 section 10C(1)(a); and
 clause 32 section 10D(2).

The operation of the amended provisions is not altered, other than to extend their operation to the offences under part 3.2 of the *Dangerous Substances Act 2004*; and sections 9, 9A and 9C(1) of the *Litter Act 2004*.

Clause 33 Keeping of vehicles seized under s10C(1)(a) - removal of definition of “relevant offence” from section 10E(5)

This clause removes section 10E(5) from the Safety and Traffic Management Act, as the definition of “relevant offence” is now included in new section 10AA, by operation of clause 27 of this Bill.

Clause 34 Further amendments, mentions of “offence”

This clause replaces other references to “offence” with “relevant offence” in sections 10B(3)(a), 10B(4) and 10B(8) of the Safety and Traffic Management Act.