



AUSTRALIAN CAPITAL TERRITORY

## **Litter (Amendment) Act 1993**

No. 67 of 1993

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### **An Act to amend the *Litter Act 1977***

*[Notified in ACT Gazette S195: 27 September 1993]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

1. This Act may be cited as the *Litter (Amendment) Act 1993*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Litter Act 1977*.<sup>1</sup>

#### **Interpretation**

4. Section 2 of the Principal Act is amended—
  - (a) by omitting the definitions of “authorized officer” and “littering offence” and substituting the following definitions:

“ ‘authorised officer’ means a person appointed under subsection 8 (1A) to be an authorised officer;

‘littering offence’ means an offence under this Act (other than section 9);” and

(b) by inserting the following definitions:

“ ‘administrative charge’ means—

- (a) the amount determined by the Minister under section 11C; or
- (b) if the Minister has not determined such an amount—\$25;

‘commercial waste’ means—

- (a) waste resulting from institutional, commercial or industrial activities; or
- (b) waste collected and transported in the course of business;”.

### **Littering generally**

5. Section 3 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the penalty provision at the foot of the section “\$2,000” and substituting “\$5,000”; and
- (b) by omitting from paragraph (b) of the penalty provision at the foot of the section “\$250” and substituting “\$3,000”.

### **Insertion**

6. After section 3 of the Principal Act the following section is inserted:

#### **Depositing of commercial waste**

“3A. A person shall not deposit commercial waste in or on a public place.

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

### **Transport of refuse etc.**

7. Section 4 of the Principal Act is amended—

- (a) by omitting “take reasonable steps” and substituting “not fail, without reasonable excuse, to so arrange, contain, fasten or cover it as”; and
- (b) by omitting the penalty provision at the foot of the section and substituting the following penalty provision:

“Penalty: \$5,000.”.

**Litter from commercial etc. premises**

8. Section 5 of the Principal Act is amended by omitting the penalty provision at the foot of the section and substituting the following penalty provision:

“Penalty: \$5,000.”.

**Repeal**

9. Section 6 of the Principal Act is repealed.

**Depositing or abandoning dangerous containers**

10. Section 7A of the Principal Act is amended—

- (a) by omitting from subsection (1) “who deposits or abandons” and substituting “shall not deposit or abandon”;
- (b) by omitting from subsection (1) all the words after “tip”;
- (c) by adding at the end of subsection (1) the following penalty provision:

“Penalty: \$5,000.”; and
- (d) by inserting in subsection (2) “or she” after “he” (wherever occurring).

**Appointment of inspectors and authorised officers**

11. Section 8 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or she” after “he”;
- (b) by inserting in subsection (1A) “or she” after “he”; and
- (c) by omitting from subsection (1A) “authorized” and substituting “authorised”.

**Powers of inspectors**

12. Section 9 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or her” after “him”;
- (b) by inserting in subsection (1) “or she” after “he” (wherever occurring);
- (c) by inserting in subsection (1) “or her” after “his” (wherever occurring);
- (d) by inserting in subsection (2) “, without reasonable excuse” after “not”;
- (e) by inserting in paragraph (2) (a) “or her” after “his”;

- (f) by adding at the end of paragraph (2) (a) “or”;
- (g) by omitting paragraph (2) (b);
- (h) by inserting in paragraph (2) (c) “or her” after “his”;
- (j) by omitting the penalty provision at the foot of subsection (2); and
- (k) by adding at the end the following subsection and penalty provision:

“(3) A person shall not furnish a false name or address.

Penalty: \$5,000.”.

### **First litter notices**

**13.** Section 10 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or she” after “he”;
- (b) by omitting from subsection (1) “or cause to be served”;
- (c) by omitting from subsection (1) “this section” and substituting “section 10C”;
- (d) by omitting subsections (2) and (2A);
- (e) by inserting in subsection (3) “be in a form approved by the administrative head and shall” after “shall”;
- (f) by omitting paragraph (3) (d) and substituting the following paragraph:
  - “(d) contain a notification to the person on whom it is served that—
    - (i) if the person pays the prescribed penalty for the alleged littering offence within 28 days after the date of the notice, no further action will be taken in respect of the alleged littering offence; and
    - (ii) if the person fails to pay the prescribed penalty for the alleged littering offence within 28 days after the date of the notice, he or she will incur a liability for the administrative charge in addition to the prescribed penalty; and”;
- (g) by omitting from subsection (3) “Minister” and substituting “administrative head”; and
- (h) by omitting subsections (4) to (9) (inclusive) and substituting the following subsection:

“(4) Nothing in this section shall be construed as requiring the serving of a notice under subsection (1).”.

### **Insertion**

**14.** After section 10 of the Principal Act the following sections are inserted:

#### **Final litter notices**

“10A. (1) Where—

- (a) a notice has been served on a person under section 10; and
- (b) the person fails to pay the prescribed penalty for the alleged littering offence in accordance with the notice;

the administrative head or an authorised officer may serve on the person a notice in accordance with section 10C.

“(2) A notice under subsection (1) shall be in a form approved by the administrative head and shall contain a notification to the person on whom it is served that—

- (a) the person has not paid the prescribed penalty for the alleged littering offence to which the notice relates;
- (b) if the person pays the sum of the prescribed penalty for the alleged littering offence and the administrative charge within 14 days after the date of the notice, no further action will be taken against the person in respect of the alleged littering offence; and
- (c) if the person fails to pay the sum of the prescribed penalty for the alleged littering offence and the administrative charge within 14 days after the date of the notice, he or she may be prosecuted for the alleged littering offence;

and may contain such other particulars, if any, as the administrative head considers necessary.

“(3) Nothing in this section shall be construed as requiring the serving of a notice under subsection (1).

#### **Withdrawal of litter notices**

“10B. (1) Where a notice has been served on a person under section 10 or 10A, the administrative head or an authorised officer may serve on that person a notice withdrawing the first mentioned notice.

“(2) A notice under subsection (1) shall state—

- (a) that a specified notice under section 10 or 10A is withdrawn; and

- (b) that no further proceedings will be taken against the person on whom the specified notice was served, in respect of the alleged littering offence to which the specified notice relates.

**Service of litter notices**

“10C. (1) A notice under section 10, 10A or 10B may be served on a person—

- (a) by delivering the notice to the person personally;
- (b) by sending the notice to the person by post addressed to the person at his or her last known place of residence or business; or
- (c) by leaving the notice at the last known place of residence or business of the person with a person apparently over the age of 16 years and apparently resident or employed at that place.

“(2) Evidence of service of a notice under section 10, 10A or 10B may be given by affidavit.

**Liability**

“10D. (1) This section applies—

- (a) where a notice under section 10 has been served on a person and the prescribed penalty is paid in accordance with the notice before the expiration of the period of 28 days after the date of the notice; or
- (b) where a notice under section 10A has been served on a person and the sum of the prescribed penalty and the administrative charge is paid in accordance with the notice before the expiration of the period of 14 days after the date of the notice.

“(2) Where this section applies—

- (a) any liability of a person in respect of the alleged littering offence to which the notice relates shall be discharged;
- (b) no further proceedings shall be taken in respect of the alleged littering offence to which the notice relates; and
- (c) no person shall be regarded as having been convicted of the alleged littering offence to which the notice relates.

“(3) Where a notice under section 10B has been served on a person, no further proceedings shall be taken against the person in respect of the alleged littering offence to which the withdrawn notice relates.

“(4) It is sufficient for the application of this section to a person on whom more than 1 notice under section 10 in respect of the same alleged littering offence has been served for that person to pay the prescribed penalty in accordance with any 1 of those notices.

“(5) It is sufficient for the application of this section to a person on whom more than 1 notice under section 10A in respect of the same alleged littering offence has been served for that person to pay the sum of the prescribed penalty and the administrative charge in accordance with any 1 of those notices.

“(6) Where the prescribed penalty or the sum of the prescribed penalty and the administrative charge is paid by cheque, payment shall be deemed not to be made unless and until the cheque is honoured upon presentation.

### **Option to prosecute**

“10E. Nothing in section 10 or 10A shall be construed as—

- (a) affecting the liability of a person to be prosecuted in the Court in respect of an alleged littering offence in relation to which a notice under section 10 or 10A has not been served;
- (b) prejudicing or affecting the institution or prosecution of proceedings in respect of an alleged littering offence; or
- (c) limiting the amount of the fine that may be imposed by the Court in respect of a littering offence.”.

### **Insertion**

**15.** After section 11 of the Principal Act the following sections are inserted:

### **Evidence**

“11A. (1) For the purposes of this Act a document that purports to have been signed by the administrative head or an authorised officer shall be taken to have been so signed unless the contrary is proved.

“(2) Where a notice is served under section 10 in respect of an alleged littering offence, a certificate signed by the administrative head or an authorised officer stating that the prescribed penalty was not paid in accordance with the notice within 28 days after the date of the notice is evidence of the matters so stated.

“(3) Where a notice is served under section 10A in respect of an alleged littering offence, a certificate signed by the administrative head or an authorised officer stating that the sum of the prescribed penalty and the administrative charge was not paid in accordance with the notice within 14 days after the date of the notice is evidence of the matters so stated.

### **Corporations—penalties**

“11B. Where a body corporate is convicted of an offence against this Act, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

### **Determined amount**

“11C. (1) The Minister may, by notice in writing published in the *Gazette*, determine an amount as the administrative charge for the purposes of this Act.

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

### **Regulations**

**16.** Section 12 of the Principal Act is amended by adding at the end the following subsection:

“(2) Without limiting the generality of subsection (1), the regulations may prescribe penalties, not exceeding a fine of \$1,000, for offences against the Act or the regulations.”.

### **Savings**

**17.** Where a notice under section 10 of the Principal Act was served before the commencement of this Act and the period of 14 days specified in the notice has not expired before the commencement of this Act, subsection 10 (5) of the Principal Act continues to apply in relation to the notice.

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#### **NOTE**

1. Reprinted as at 31 July 1991. See also Act No. 121, 1991.

*[Presentation speech made in Assembly on 17 June 1993]*