



Australian Capital Territory

Litter (Shopping Trolleys) Amendment Act 2010

A2010-34

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New part 4A	2
5 Dictionary, new definitions	15
6 Magistrates Court (Litter Infringement Notices) Regulation 2004, schedule 1, new items 12 to 15	16



Australian Capital Territory

Litter (Shopping Trolleys) Amendment Act 2010

A2010-34

An Act to amend the *Litter Act 2004*, and for other purposes

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

1 Name of Act

This Act is the *Litter (Shopping Trolleys) Amendment Act 2010*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Litter Act 2004*.

Note This Act also amends the *Magistrates Court (Litter Infringement Notices) Regulation 2004* (see s 6).

4 New part 4A

insert

Part 4A Shopping trolleys

24C Definitions—pt 4A

In this part:

collection area—see section 24H (2) (c).

collection day—see section 24H (2) (b).

collection day notice—see section 24H (1).

removal notice means a notice under section 24I (3).

removal notice location, of a retailer's shopping trolley, means—

- (a) the place mentioned in section 24I (1) where the trolley was found; and
- (b) any place outside the retailer's shopping centre precinct that can be clearly seen from the place mentioned in paragraph (a).

retailer means a person who provides shopping trolleys for use in the retailer's premises.

retailer collection notice—see section 24K (2).

retailer's shopping centre precinct, for a retailer's shopping trolley, means the shopping centre precinct where the retailer's premises identified on the trolley are located.

retention area—see the *Uncollected Goods Act 1996*, dictionary.

shopping centre, for retail premises which provide shopping trolleys for use in the premises, means—

- (a) if the premises occupy a single building—the retail premises; or
- (b) if the premises are in a shopping centre, shopping mall, shopping court or shopping arcade—the centre, mall, court or arcade.

shopping centre precinct means—

- (a) an area consisting of—
 - (i) a shopping centre; and
 - (ii) any car park provided for the use of customers of the shopping centre; and
 - (iii) any area, including a road or other public place, between the shopping centre and the car park; and

- (iv) any other area provided for the use of customers of the shopping centre immediately adjacent to the shopping centre; or
- (b) an area prescribed by regulation.

shopping trolley means—

- (a) a predominantly metal trolley incorporating a basket that cannot be removed; or
- (b) a trolley or handcart prescribed by regulation.

24D Direction to return shopping trolley

- (1) This section applies if an authorised person or police officer believes on reasonable grounds that—
 - (a) a person—
 - (i) has taken a retailer's shopping trolley from the retailer's shopping centre precinct; or
 - (ii) is using a retailer's shopping trolley in a place outside the retailer's shopping centre precinct; or
 - (iii) has left a retailer's shopping trolley at a place outside the retailer's shopping centre precinct; and
 - (b) for paragraph (a) (i) and (ii), the person is not—
 - (i) the retailer identified on the trolley; or
 - (ii) a person authorised by the retailer to do the things mentioned in paragraph (a) (i) and (ii).
- (2) The authorised person or police officer may give the person a written direction to return the shopping trolley to the retailer's premises identified on the trolley.

- (3) The person must comply with the direction.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) The authorised person or police officer must not give the person a written direction under subsection (2) if it is harsh or unreasonable in the circumstances to do so.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see Criminal Code, s 58).

- (6) A direction must—
- (a) state that it is an offence against subsection (3) not to comply with the direction; and
 - (b) state a reasonable time within which the direction must be complied with; and
 - (c) include a statement that the person may be served with an infringement notice or prosecuted under subsection (3) if the person does not comply with the direction.

- (7) In this section:

infringement notice—see the *Magistrates Court Act 1930*, section 117.

24E Notice about taking etc shopping trolley outside of shopping centre precinct

- (1) A retailer must place prominently at or near the customer exits in the retailer's premises a notice that—
- (a) contains the following statement:
'Under the *Litter Act 2004* fines can apply for taking, using or leaving a shopping trolley outside this shopping centre precinct'; and
 - (b) describes the retailer's shopping centre precinct; and

- (c) contains anything else prescribed by regulation; and
- (d) can be seen and read easily by a person leaving the retailer's premises.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

24F Identification of ownership of shopping trolleys

- (1) A retailer must display on each of the retailer's shopping trolleys the following information:
 - (a) the retailer's name;
 - (b) the address of the retailer's premises at which the retailer keeps the trolley;
 - (c) the contact telephone number of—
 - (i) the retailer; or
 - (ii) a person authorised by the retailer to collect the trolley;
 - (d) the telephone number for the shopping trolley hotline;
 - (e) anything else prescribed by regulation.
- (2) The information mentioned in subsection (1)—
 - (a) must be legible and conspicuously displayed on the shopping trolley; and
 - (b) must not be easily removed from the trolley or made illegible.
- (3) A retailer commits an offence if the retailer fails to comply with this section.

Maximum penalty: 10 penalty units.

- (4) Subsection (3) does not apply if the information mentioned in subsection (1) is—
- (a) removed from the shopping trolley by a person other than the retailer; or
 - (b) made illegible by a person other than the retailer.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

shopping trolley hotline means a telephone contact service operated by the Territory to receive information about shopping trolleys left in public places.

24G Retailer must keep shopping trolleys within shopping centre precinct

- (1) A retailer commits an offence if the retailer fails to keep a shopping trolley identified as belonging to the retailer under section 24F (1) within the retailer's shopping centre precinct.

Maximum penalty: 60 penalty units.

- (2) This section does not apply if the shopping trolley is—
- (a) in premises owned or leased by the retailer or a person authorised by the retailer to keep the trolley; or
 - (b) in the possession of the retailer or a person authorised by the retailer to be in possession of the trolley; or
 - (c) in a shopping centre precinct other than the retailer's shopping centre precinct.

- (3) This section does not apply if—
- (a) the retailer operates and maintains a trolley containment system at the retailer’s premises where the shopping trolley came from and the containment system applied to the trolley; or
 - (b) the retailer took all reasonable measures to ensure that the trolley was kept within the retailer’s shopping centre precinct; or
 - (c) the number of trolleys provided by the retailer at the retailer’s premises where the trolley came from is less than the number prescribed by regulation.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) and (3) (see Criminal Code, s 58).

- (4) In this section:

trolley containment system means a system approved by the chief executive that is designed to reduce the number of a retailer’s shopping trolleys taken out of the retailer’s shopping centre precinct.

Example—trolley containment system

a system which requires the deposit of money by customers to use a shopping trolley which is refundable on the return of the trolley

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24H Notice of shopping trolley collection days

- (1) The chief executive may give a retailer a notice (a ***collection day notice***) of the chief executive’s intention to remove shopping trolleys left in places outside a shopping centre precinct.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (2) A collection day notice must state the following:
- (a) the date the notice is given;
 - (b) the day (the *collection day*) that the removal of shopping trolleys will take place, being a day not less than 2 days after the date the notice is given;
 - (c) the area (the *collection area*) from where trolleys will be removed;
 - (d) if a trolley is found in a place outside a shopping centre precinct in a collection area on a collection day, the trolley may—
 - (i) be removed to a retention area; and
 - (ii) only be collected by the retailer from the retention area if the retailer pays all fees, charges and other amounts payable under this Act;
- Note* A fee for removing and storing the trolley may be determined under s 25 for this provision.
- (e) it is an offence against section 24G if the retailer fails to keep a trolley identified as belonging to the retailer under section 24F (1) within the retailer's shopping centre precinct;
 - (f) the maximum penalty for the offence;
 - (g) how the retailer may contact an authorised person, including, for example, by giving a telephone number.

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24I Notice to remove individual shopping trolley

- (1) This section applies if a retailer's shopping trolley is found in a place outside the retailer's shopping centre precinct by an authorised person or police officer.

- (2) This section does not apply if the retailer identified on the shopping trolley has been given a collection day notice and the trolley is found on a collection day in a collection area.
- (3) An authorised person or police officer may give the retailer a notice (a **removal notice**) to remove the shopping trolley from the removal notice location.
- (4) A removal notice must state the following:
 - (a) the time and date the notice is given;
 - (b) the place where the shopping trolley was found;
 - (c) that the trolley must be removed from the removal notice location within 24 hours after the time the notice is given;
 - (d) if the trolley is not removed from the removal notice location within 24 hours after the time the notice is given, the trolley may—
 - (i) be removed to a retention area; and
 - (ii) only be collected by the retailer from the retention area if the retailer pays all fees, charges and other amounts payable under this Act;
 - (e) it is an offence against section 24G if the retailer fails to keep a trolley identified as belonging to the retailer under section 24F (1) within the retailer's shopping centre precinct;
 - (f) the maximum penalty for the offence;
 - (g) how the retailer may contact an authorised person, including, for example, by giving a telephone number.

Note A fee for removing and storing the trolley may be determined under s 25 for this provision.

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) The removal notice must be given by—
 - (a) securely attaching the notice, addressed to the retailer, to the shopping trolley in a conspicuous position; and
 - (b) calling the contact telephone number stated on the trolley and giving the information in the notice to the retailer.
- (6) For subsection (5) (b), information in the removal notice is taken to have been given to the retailer if—
 - (a) the information is given to—
 - (i) a person who answers the telephone call; or
 - (ii) a telephone answering or recording device; or
 - (b) a reasonable attempt was made to give the information to the retailer by telephone.
- (7) A removal notice given in the way mentioned in subsection (5) is taken to have been given to the retailer at the time and date the telephone call is made.

24J Removal of shopping trolley to retention area

- (1) The chief executive may authorise a person (a *trolley collector*) to remove shopping trolleys found outside shopping centre precincts to a retention area.
- (2) A trolley collector or authorised person may remove a shopping trolley found outside a shopping centre precinct to a retention area if the retailer identified on the trolley has been given—
 - (a) a collection day notice and the trolley is found on a collection day in a collection area; or
 - (b) a removal notice in relation to the trolley and the trolley has not been removed from the removal notice location within 24 hours after the time the notice was given.

- (3) Subsection (2) does not apply if the shopping trolley is—
- (a) in premises owned or leased by the retailer or a person authorised by the retailer to keep the trolley; or
 - (b) in the possession of the retailer or a person authorised by the retailer to be in possession of the trolley; or
 - (c) in a shopping centre precinct other than the retailer’s shopping centre precinct.
- (4) However, an authorised person or a police officer may remove a shopping trolley to a retention area without a notice under section 24H or section 24I having been given if the authorised person or a police officer believes on reasonable grounds that—
- (a) the trolley may cause injury to a person or animal or damage to property or a public place if it is not removed; or
 - (b) it is impractical for the retailer to remove the trolley.

Example—par (a)

A shopping trolley is left next to a main road. Prompt removal is necessary because the trolley could roll or be pushed onto the road.

Example—par (b)

A shopping trolley is dumped in a waterway. Removal by the retailer is impractical because it requires specialised equipment to remove it.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24K Retention of shopping trolleys

- (1) This section applies if a shopping trolley is removed to a retention area under section 24J.
- (2) The chief executive must give written notice (a ***retailer collection notice***) that the shopping trolley is in the retention area to the retailer identified on the trolley.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (3) The retailer collection notice must state the following:
- (a) the date of the notice;
 - (b) the address of the retention area where the trolley may be collected;
 - (c) when the trolley may be collected;
 - (d) any fee the retailer must pay before the trolley may be collected;

Note A fee for removing and storing the trolley may be determined under s 25 for this provision.

- (e) that the trolley may be disposed of under the *Uncollected Goods Act 1996*, part 3 if the trolley is not collected within 7 days after the day the notice is given to the retailer.

24L Disposal of retained shopping trolleys

If a shopping trolley is removed to a retention area under section 24J—

- (a) the trolley is taken to be uncollected goods for the *Uncollected Goods Act 1996*; and
- (b) the trolley is taken to have become uncollected goods for that Act on the day the retailer collection notice is given; and
- (c) the chief executive is taken to be the possessor of the trolley for that Act; and
- (d) the chief executive may dispose of the trolley under that Act, part 3 after 7 days after the day the retailer collection notice is given; and
- (e) if a trolley is to be destroyed under that Act, part 3—to the extent reasonably practicable, the component materials of the trolley must be recycled; and

- (f) for that Act, section 26 (2) (a) and (b) and section 30 (1) (a) and (b), the reasonable costs incurred by the chief executive are taken to be any fee determined under this Act for the removal, storage and disposal of the trolley; and

Note A fee for removing, storing and disposing of the trolley may be determined under s 25 for this provision.

- (g) that Act, section 27 does not apply.

24M Recovery of cost of disposal etc of shopping trolley

- (1) This section applies if a shopping trolley has been disposed of under section 24L and the *Uncollected Goods Act 1996*, part 3.
- (2) A fee for the removal, storage and disposal of the shopping trolley is a debt due to the Territory by the retailer.

Note A fee for removing, storing and disposing of the trolley may be determined under s 25 for s 24L (f).

- (3) The debt is payable within 14 days after the date of the invoice.
- (4) Interest is payable on the amount of the debt that remains unpaid after the payment date at the interest rate mentioned in the *Court Procedures Rules 2006*, schedule 2, rule 2.3 (Interest on judgment after 30 June 2010—Supreme Court).

24N Removing, defacing or interfering with removal notices

- (1) A person commits an offence if—
 - (a) a removal notice is placed on, or attached to, a shopping trolley; and
 - (b) the person is not—
 - (i) an authorised person or police officer; or
 - (ii) the retailer; or
 - (iii) a person authorised by the retailer to collect the trolley; and

(c) the person removes, defaces or interferes with the notice.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

5 Dictionary, new definitions

insert

collection area, for part 4A (Shopping trolleys)—see section 24H (2) (c).

collection day, for part 4A (Shopping trolleys)—see section 24H (2) (b).

collection day notice, for part 4A (Shopping trolleys)—see section 24H (1).

removal notice, for part 4A (Shopping trolleys)—see section 24C.

removal notice location, for part 4A (Shopping trolleys)—see section 24C.

retailer, for part 4A (Shopping trolleys)—see section 24C.

retailer collection notice, for part 4A (Shopping trolleys)—see section 24K (2).

retailer's shopping centre precinct, for part 4A (Shopping trolleys)—see section 24C.

retention area, for part 4A (Shopping trolleys)—see the *Uncollected Goods Act 1996*, dictionary.

shopping centre, for part 4A (Shopping trolleys)—see section 24C.

shopping centre precinct, for part 4A (Shopping trolleys)—see section 24C.

shopping trolley, for part 4A (Shopping trolleys)—see section 24C.

**6 Magistrates Court (Litter Infringement Notices)
Regulation 2004, schedule 1, new items 12 to 15**

insert

12	24D (3)	10	60
13	24E (1)	10	200
14	24F (3)	10	20
15	24N (1)	5	60

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 February 2010.

2 Notification

Notified under the Legislation Act on 2 September 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Litter (Shopping Trolleys) Amendment Bill 2010, which was passed by the Legislative Assembly on 25 August 2010.

Acting Clerk of the Legislative Assembly

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