

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Territory and Municipal Services)

Dangerous Substances and Litter (Dumping) Legislation Amendment Bill 2008

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(Minister for Territory and Municipal Services)

Dangerous Substances and Litter (Dumping) Legislation Amendment Bill 2008

A Bill for

An Act to amend laws relating to the dumping of dangerous substances and litter, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Dangerous Substances and Litter (Dumping)*
4 *Legislation Amendment Bill 2008.*

5 **2 Commencement**

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

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

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

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

Part 2 Dangerous Substances Act 2004

3 Legislation amended—pt 2

This part amends the *Dangerous Substances Act 2004*.

4 Failure to comply with safety duty—exposing people to substantial risk of death or serious harm Section 43 (1), new example

insert

Example

Peter dumps material that he knows contains asbestos in an ACT park, where rangers regularly patrol. He is reckless about whether this poses a danger to anyone. Peter commits an offence against this section because asbestos is a dangerous substance and, under the general safety duty of everyone involved in handling a dangerous substance, he must take all reasonable steps to minimise the risks resulting from handling the substance (see s 23 and s 41). Handling a dangerous substance includes disposing of the substance (see s 11). Peter has exposed the rangers and others (eg anyone using the park who comes across the material) to a substantial risk of developing an asbestos-related disease.

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).

1 **5 Failure to comply with safety duty—exposing property or**
2 **environment to substantial risk of substantial damage**
3 **Section 45 (1), new example**

4 *insert*

5 **Example**

6 Sarah dumps arsenic in a stormwater drain. She is reckless about whether she is
7 exposing the environment to a substantial risk of contamination. Sarah commits
8 an offence against this section because arsenic is a dangerous substance and,
9 under the general safety duty of everyone involved in handling a dangerous
10 substance, she must take all reasonable steps to minimise the risks resulting from
11 handling the substance (see s 23 and s 41). Handling a dangerous substance
12 includes disposing of the substance (see s 11). Sarah has exposed the ACT's
13 waterways to a substantial risk of contamination.

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

1 **Part 3** **Litter Act 2004**

2 **6** **Legislation amended—pt 3**

3 This part amends the *Litter Act 2004*.

4 **7** **Littering**
5 **Section 8 (2), note**

6 *substitute*

7 *Note* *Escape* is defined in the dictionary.

8 **8** **Section 8 (6)**

9 *omit*

10 **9** **Aggravated littering**
11 **Section 9, penalty**

12 *substitute*

13 Maximum penalty: 100 penalty units, imprisonment for 1 year or
14 both.

15 **10** **New sections 9A to 9C**

16 *insert*

17 **9A** **Dumping litter**

18 (1) A person commits an offence if—

19 (a) the person intentionally dumps litter at a public place; and

20 (b) either—

21 (i) the volume or weight of litter is more than the amount
22 prescribed by regulation; or

- 1 (ii) the litter is larger than the size prescribed by regulation.
- 2 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 3 both.
- 4 (2) A person commits an offence if—
- 5 (a) the person intentionally dumps litter anywhere; and
- 6 (b) either—
- 7 (i) the volume or weight of litter is more than the amount
- 8 prescribed by regulation; or
- 9 (ii) the litter is larger than the size prescribed by regulation;
- 10 and
- 11 (c) the person is reckless about whether the litter, or part of the
- 12 litter, escapes, or is likely to escape, into or onto a public place.
- 13 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 14 both.
- 15 (3) Strict liability applies to subsection (1) (b) and subsection (2) (b).

16 **9B Dumping litter—strict liability**

- 17 (1) A person commits an offence if—
- 18 (a) the person dumps litter at a public place; and
- 19 (b) either—
- 20 (i) the volume or weight of litter is more than the amount
- 21 prescribed by regulation; or
- 22 (ii) the litter is larger than the size prescribed by regulation.
- 23 Maximum penalty: 50 penalty units.
- 24 (2) A person commits an offence if—
- 25 (a) the person dumps litter; and

- 1 (b) either—
- 2 (i) the volume or weight of litter is more than the amount
- 3 prescribed by regulation; or
- 4 (ii) the litter is larger than the size prescribed by regulation;
- 5 and
- 6 (c) the litter, or part of the litter, escapes, or is likely to escape,
- 7 into or onto a public place.

8 Maximum penalty: 50 penalty units.

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

10 **9C Commercial waste**

- 11 (1) A person commits an offence if the person deposits commercial
- 12 waste at a public place.

13 Maximum penalty: 100 penalty units, imprisonment for 1 year or

14 both.

- 15 (2) An occupier of commercial, industrial or business premises commits
- 16 an offence if the occupier fails to take reasonable steps to prevent
- 17 litter from the premises being deposited at a public place.

18 Maximum penalty: 100 penalty units.

19 **11 Section 10 heading**

20 *substitute*

21 **10 Commercial waste—strict liability**

- 1 **12 Division 4.3 heading**
- 2 *substitute*
- 3 **Division 4.3 Dealing with litter**
- 4 **13 New subdivision 4.3.1 heading**
- 5 *insert*
- 6 **Subdivision 4.3.1 Dealing with litter—removal etc by**
- 7 **person**
- 8 **14 Section 21 heading**
- 9 *substitute*
- 10 **21 Notice to remove etc litter**
- 11 **15 Section 21 (4)**
- 12 *substitute*
- 13 (4) The notice must contain a statement to the effect that if the litter is
- 14 not removed or disposed of, or the public place not restored, in
- 15 accordance with the requirement—
- 16 (a) an authorised person may authorise someone else to remove or
- 17 dispose of the litter or restore the public place; and
- 18 (b) the reasonable cost of the removal, disposal or restoration is a
- 19 debt due to the Territory by the person who is required to
- 20 comply with the requirement.
- 21 *Note* An amount owing under a law may be recovered as a debt in a court of
- 22 competent jurisdiction (see Legislation Act, s 177).

1	16	Section 22 heading
2		<i>substitute</i>
3	22	Authority to remove etc litter when direction not complied with
4		
5	17	Section 22 (2)
6		<i>substitute</i>
7	(2)	The chief executive may arrange for a person to remove or dispose
8		of the litter, or restore the public place, in relation to which the
9		direction relates.
10	18	Section 23, except note
11		<i>substitute</i>
12	23	Liability for cost of removal etc
13		A person who fails to comply with a requirement in a notice under
14		section 21 (Notice to remove etc litter) must pay to the Territory the
15		reasonable cost of any removal, disposal or restoration carried out
16		under section 22.
17	19	AAT review of notice under section 21
18		Section 24
19		<i>omit</i>
20		(Notice to remove litter)
21		<i>substitute</i>
22		(Notice to remove etc litter)

20 New subdivision 4.3.2

after section 24, insert

Subdivision 4.3.2 Dealing with litter—removal etc by Territory

24A Removal etc of litter—by Territory

(1) This section applies if an authorised person or police officer believes on reasonable grounds that—

(a) litter in a public place has been deposited by anyone (the *litterer*) in contravention of this Act; and

(b) either or both of the following applies:

(i) prompt removal or disposal of the litter is necessary because it could cause injury to a person or animal or damage to property;

(ii) the size, shape, nature or volume of the litter means that prompt removal or disposal is in the public interest.

Examples

- 1 A large volume of litter is dumped next to a main road. Prompt removal is in the public interest because the litter smells and is unsightly.
- 2 Access to a walking trail in a nature reserve is blocked by an old spa bath that has been dumped in the reserve. Prompt removal is in the public interest to restore access to the trail.

1 3 A large public building is being extensively renovated. The
2 Territory gives permission for the builder to establish a
3 temporary depot on adjacent public land for rubbish from the
4 building site to be deposited. The depot is fenced. When the
5 renovations are finished, the rubbish is removed and the fence
6 taken down. However, someone dumps rubbish at the site, and
7 soon others also dump rubbish there. Prompt removal is in the
8 public interest because it discourages the dumping of rubbish at
9 the site.

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

13 (2) The chief executive may arrange for a person to do either or both of
14 the following:

- 15 (a) remove or dispose of the litter from the public place;
- 16 (b) restore the public place affected by the litter to a state as close
17 as practicable to the state it was in immediately before the litter
18 was deposited.

19 (3) To remove any doubt, if this section applies, notice need not be
20 given to the litterer under section 21 (Notice to remove etc litter).

21 **24B Recovery of costs associated with removal etc of litter**

22 (1) If the chief executive arranges for a person to do a thing mentioned
23 in section 24A (2), the litterer must pay to the Territory the
24 reasonable cost of doing the thing.

25 *Note* An amount owing under a law may be recovered as a debt in a court of
26 competent jurisdiction (see Legislation Act, s 177).

27 (2) In this section:

28 ***litterer***—see section 24A (1).

- 1 **21 Dictionary, new definition of *escape***
- 2 *insert*
- 3 ***escape***, into or onto a public place, includes fall, descend and
- 4 percolate, and be blown or washed, into or onto the place.

1 **Part 4** **Magistrates Court (Litter**
2 **Infringement Notices) Regulation**
3 **2004**

4 **22** **Legislation amended—pt 4**

5 This part amends the *Magistrates Court (Litter Infringement*
6 *Notices) Regulation 2004*.

7 **23** **Litter Act infringement notice offences and penalties**
8 **Schedule 1, table, new item 4**

9 *insert*

4	9B	50	1 000
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1 **Part 5** **Road Transport (General)**
2 **Regulation 2000**

3 **24** **Legislation amended—pt 5**

4 This part amends the *Road Transport (General) Regulation 2000*.

5 **25** **New part 1A**

6 *insert*

7 **Part 1A** **Road transport legislation**

8 **4B** **What is the road transport legislation?—Act, s 6 (i)**

9 For the *Road Transport (Safety and Traffic Management) Act 1999*,
10 section 10D (4) (a) (i) (Registered operator and interested people to
11 be notified), the following are prescribed:

- 12 • the *Dangerous Substances Act 2004*, part 3.2 (Failure to comply
13 with safety duties);
- 14 • the *Litter Act 2004*, section 9 (Aggravated littering);
- 15 • the *Litter Act 2004*, section 9A (Dumping litter);
- 16 • the *Litter Act 2004*, section 9C (1) (Commercial waste).

1 **Part 6** **Road Transport (Safety and**
2 **Traffic Management) Act 1999**

3 **26** **Legislation amended—pt 6**

4 This part amends the *Road Transport (Safety and Traffic*
5 *Management) Act 1999*.

6 **27** **New section 10AA**

7 *before section 10A, insert*

8 **10AA** **Meaning of *relevant offence*—div 2.3**

9 In this division:

10 *relevant offence* means an offence against any of the following
11 provisions:

- 12 • section 5A (Races, attempts on speed records, speed trials etc);
- 13 • section 5B (Burnouts and other prohibited conduct);
- 14 • section 8 (Menacing driving);
- 15 • the *Dangerous Substances Act 2004*, part 3.2 (Failure to comply
- 16 with safety duties);
- 17 • the *Litter Act 2004*, section 9 (Aggravated littering);
- 18 • the *Litter Act 2004*, section 9A (Dumping litter);
- 19 • the *Litter Act 2004*, section 9C (1) (Commercial waste).

1 **28 Impounding or forfeiture of vehicles on conviction etc for**
2 **certain offences**
3 **Section 10B (1)**

4 *omit everything before paragraph (a), substitute*

- 5 (1) If a court convicts a person, or finds a person guilty, of a relevant
6 offence, and a motor vehicle has been used by the person in
7 committing the offence, the vehicle is—

8 **29 Section 10B (6) (a)**

9 *substitute*

- 10 (a) a court convicts a person, or finds a person guilty, of a relevant
11 offence, and a motor vehicle has been used by the person in
12 committing the offence; and

13 **30 Section 10B (10)**

14 *substitute*

- 15 (10) For this section—

- 16 (a) a person who is convicted, or found guilty, of a relevant
17 offence (the ***current offence***) is a ***repeat offender*** in relation to
18 the current offence if the person has been convicted, or found
19 guilty, of a relevant offence within 5 years before being
20 convicted, or found guilty, of the current offence; and
- 21 (b) a person who is convicted, or found guilty, of a relevant
22 offence is a ***first offender*** in relation to the offence if the
23 person is not a repeat offender in relation to the offence.

**31 Powers of police officers to seize and impound vehicles
used in committing certain offences
Section 10C (1) (a)**

substitute

(a) the police officer believes on reasonable grounds that the vehicle is being or has been used by a person in committing a relevant offence (other than an offence against section 8 (Menacing driving)); or

**32 Registered operator and interested people to be notified
Section 10D (2)**

omit everything before paragraph (a), substitute

(2) If a prosecution is started against a person for a relevant offence involving a motor vehicle, the chief police officer must give notice of the prosecution to—

**33 Keeping of vehicles seized under s 10C (1) (a)
Section 10E (5)**

omit

34 Further amendments, mentions of offence

omit

offence

substitute

relevant offence

in

- section 10B (3) (a)
- section 10B (4)
- section 10B (8)

- 1 • section 10B (9)
 - 2 • section 10D (4) (a) (i)
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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

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