

TASMANIA

LITTER AMENDMENT BILL 2010

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 4 amended (Application of Act)
6. Part 2: Heading amended
7. Section 7 amended (Power of Director to appoint authorised officers)
8. Section 8A inserted
 - 8A. Ex-officio authorised officers
9. Section 9 substituted
 9. Littering offences
10. Section 11 amended (Unsolicited documents must be put in mailboxes, &c.)
11. Section 12 substituted
 12. Leaflets, &c., not to be placed on vehicles or vessels
12. Section 13 amended (Bill-posting without consent)
13. Section 16 amended (Duty of person authorising or arranging for unsolicited document)
14. Section 17 amended (Infringement notice)
15. Section 18 inserted
 18. Claiming statutory exception to liability of registered operator or owner

16. Part 3, Division 4: Heading amended
17. Section 24 amended (Onus of registered operator in respect of motor vehicle or trailer)
18. Section 24A inserted
 - 24A. Onus of registered owner in respect of vessel
19. Section 25 amended (Proceedings in respect of registered operator or owner onus liability)
20. Section 26 amended (Evidentiary effect of statutory declaration in proceedings against another person)
21. Section 27 substituted
 27. More than one person registered as operator of motor vehicle or trailer
 28. More than one person registered as owner of vessel
22. Section 29 amended (Bodies corporate and joint registered operators and owners)
23. Section 30 substituted
 30. Exceptions to liability of registered operators and owners
24. Section 31 repealed
25. Section 39 amended (Reports of offences)
26. Section 40 amended (False or misleading statements)
27. Section 41 amended (Powers of authorised officers)
28. Sections 45 and 46 substituted
 45. Direction by police officers in connection with offences
 46. Facilitation of proof of certain matters concerning motor vehicles and trailers
29. Section 46A inserted
 - 46A. Facilitation of proof of certain matters concerning vessels
30. Section 48 amended (Litter Management Fund)
31. Section 49 amended (Protection from liability)
32. Section 50 amended (Delegation of functions, &c., by Director)
33. Section 50A inserted
 - 50A. Exemptions
34. Section 51 substituted

- 51. Evidentiary provision
- 35. Section 51A inserted
 - 51A. Time for instituting proceedings
- 36. Section 52 amended (Regulations)
- 37. Section 53A inserted
 - 53A. 2010 transitional provisions
- 38. Schedule 3 inserted
 - Schedule 3 – 2010 Transitional Provisions
- 39. Repeal of Act

LITTER AMENDMENT BILL 2010

(Brought in by the Minister for Environment, Parks and Heritage, the Honourable David James O'Byrne)

A BILL FOR

An Act to amend the *Litter Act 2007* and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Litter Amendment Act 2010*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Litter Act 2007** is referred to as the Principal Act.

*No. 38 of 2007

Litter Amendment Act 2010
Act No. of

s. 4

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “Secretary” from the definition of “approved” and substituting “Director”;
- (b) by omitting the definition of “authorised officer” and substituting the following definition:

“authorised officer” means –

- (a) a person who, under section 7 or 8, is appointed as an authorised officer; or
 - (b) a person who, under section 8A is an authorised officer by virtue of his or her office;
- (c) by inserting the following definition after the definition of “deposit”:

“Director” means the Director, Environment Protection Authority appointed under section 18 of the *Environmental Management and Pollution Control Act 1994*;

Litter Amendment Act 2010
Act No. of

s. 4

-
- (d) by inserting “abandoned vessel parts and equipment,” after “parts,” in paragraph (a) of the definition of “litter”;
 - (e) by omitting the definition of “luxury hire car”;
 - (f) by omitting the definition of “place” and substituting the following definition:

“place” includes –

- (a) a receptacle; and
 - (b) any State waters;
- (g) by omitting the definition of “public passenger vehicle”;
 - (h) by inserting the following definition after the definition of “registered operator”:

“registered owner”, of a vessel,
means –

- (a) in the case of a vessel registered in Tasmania, the person who, under the *Marine and Safety Authority Act 1997*, is registered or recorded as its owner under the by-laws governing the registration of vessels of its particular kind; or
- (b) in the case of a vessel registered, licensed or

Litter Amendment Act 2010
Act No. of

s. 4

surveyed in another jurisdiction, the person who is registered or recorded as its owner under the law of that jurisdiction corresponding to the *Marine and Safety Authority Act 1997*;

- (i) by omitting the definition of “Secretary”;
- (j) by inserting the following definition after the definition of “small passenger vehicle”:

“State waters” means –

- (a) any waters of the territorial sea of Australia that are –
 - (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
 - (ii) adjacent to the State; and
- (b) any marine or tidal waters that are on the landward

Litter Amendment Act 2010
Act No. of

s. 4

side of that baseline and
are adjacent to the State;
and

- (c) any inland waters of the State, inclusive of those in artificial water storages and artificial water courses;
- (k) by inserting “or section 24A(2)” after “section 24(2)” in the definition of “statutory defence”;
- (l) by omitting the definition of “taxi”;
- (m) by inserting the following definition after the definition of “trailer”:

“use” includes –

- (a) in relation to a motor vehicle, the driving, idling, leaving, loading, parking, standing and unloading of the motor vehicle; and
- (b) in relation to a trailer, the leaving, loading, parking, standing, towing and unloading of the trailer; and
- (c) in relation to a vessel, the use of the vessel even when –

Litter Amendment Act 2010
Act No. of

s. 4

- (i) riding at anchor;
or
 - (ii) tied to a mooring;
or
 - (iii) tied up to a jetty,
wharf or
breakwater; or
 - (iv) berthed in a
marina; or
 - (v) secured to another
vessel to which
subparagraph (i),
(ii), (iii) or (iv)
applies; or
 - (vi) connected up to
something such as
a crane, slipway
cradle or trailer
winch in order to
be put into or
taken out of the
water;
- (n) by omitting the definition of “vehicle”
and substituting the following definition:

“vehicle” means anything capable of
transporting people, objects or
materials by road, rail or air,
regardless of how the thing is
moved or propelled;

Litter Amendment Act 2010
Act No. of

s. 5

- (o) by inserting the following definition after the definition of “vehicle”:

“**vessel**” means any kind of vessel other than –

- (a) a vessel under the control of the Australian Defence Force; or
- (b) a warship, naval auxiliary or other vessel operating exclusively in the non-commercial government service of a foreign country;

5. Section 4 amended (Application of Act)

Section 4(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) all State waters.

6. Part 2: Heading amended

Part 2 of the Principal Act is amended by omitting “**APPOINTMENT OF AUTHORISED OFFICERS**” from the heading to that Part and substituting “**AUTHORISED OFFICERS**”.

Litter Amendment Act 2010
Act No. of

s. 7

7. Section 7 amended (Power of Director to appoint authorised officers)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Secretary” and substituting “Director”;
- (b) by omitting subsection (2);
- (c) by omitting from subsection (3) “Secretary” and substituting “Director”;
- (d) by omitting from subsection (4) “Secretary” and substituting “Director”.

8. Section 8A inserted

After section 8 of the Principal Act, the following section is inserted in Part 2:

8A. Ex-officio authorised officers

Each of the following persons is an authorised officer by virtue of his or her office:

- (a) the Director;
- (b) a general manager;
- (c) a police officer.

9. Section 9 substituted

Section 9 of the Principal Act is repealed and the following section is substituted:

9. Littering offences

- (1) A person must not deposit litter in any public place except in a receptacle that the owner or controller of the public place has provided for litter.

Penalty: Fine not exceeding –

- (a) if the litter consists only of a single item of personal litter, 2 penalty units; or
 - (b) if paragraph (a) of this penalty does not apply but the litter does not exceed 55 litres in volume, 20 penalty units; or
 - (c) if the litter exceeds 55 litres in volume, 50 penalty units.
- (2) A person must not, in a public place, deposit litter in any receptacle provided for litter if it is, or reasonably ought to be, evident to the person that –
- (a) from markings on the receptacle or elsewhere at the public place, the receptacle is not a suitable

Litter Amendment Act 2010
Act No. of

s. 9

receptacle for litter of that nature;
or

- (b) from the nature of the litter or receptacle, the receptacle is not a suitable receptacle for the litter;
or
- (c) the receptacle is already full; or
- (d) the receptacle has insufficient space, or remaining space, to hold the litter; or
- (e) the receptacle is undergoing repairs or maintenance, is sealed or is otherwise temporarily unavailable for use as a receptacle for litter.

Penalty: Fine not exceeding –

- (a) if the litter consists only of a single item of personal litter, 2 penalty units; or
- (b) if paragraph (a) of this penalty does not apply but the litter does not exceed 55 litres in volume, 20 penalty units; or
- (c) if the litter exceeds 55 litres in volume, 50 penalty units.

Litter Amendment Act 2010
Act No. of

s. 9

(3) A person must not, in a public place, deposit litter in any receptacle provided for litter if –

- (a) it is, or reasonably ought to be, evident to the person from the nature of the litter that the litter is of household or commercial origin; and
- (b) there are no markings on the receptacle to indicate that it is for litter of household or commercial origin.

Penalty: Fine not exceeding –

- (a) if the litter does not exceed 55 litres in volume, 20 penalty units; or
 - (b) if the litter exceeds 55 litres in volume, 50 penalty units.
- (4) A person must not deposit litter in any private place if the person –
- (a) is not the owner or occupier of the private place; and
 - (b) does not have the consent of the owner or occupier of the private place to deposit the litter in the private place.

Litter Amendment Act 2010
Act No. of

s. 9

Penalty: Fine not exceeding –

- (a) if the litter consists only of a single item of personal litter, 2 penalty units; or
 - (b) if paragraph (a) of this penalty does not apply but the litter does not exceed 55 litres in volume, 20 penalty units; or
 - (c) if the litter exceeds 55 litres in volume, 50 penalty units.
- (5) A person must not deposit litter in any open private place in such a way that –
- (a) the litter or any part of the litter escapes into a public place or another private place; or
 - (b) the litter or any part of the litter is likely to escape into a public place or another private place.

Penalty: Fine not exceeding –

- (a) if the litter consists only of a single item of personal litter, 5 penalty units; or
- (b) if paragraph (a) of this penalty does not apply but

Litter Amendment Act 2010
Act No. of

s. 9

the litter does not exceed
55 litres in volume, 20
penalty units; or

(c) if the litter exceeds 55
litres in volume, 50
penalty units.

- (6) Subject to subsections (7) and (8), every offence under this section is an offence of strict liability.
- (7) It is a defence in proceedings for a minor offence under this section if the defendant establishes that the deposition of the relevant litter was accidental and the defendant took reasonable steps to retrieve it.
- (8) It is a defence in proceedings for an offence under this section, other than a minor offence, if the defendant establishes that –
- (a) the deposition of the relevant litter was accidental and the defendant took reasonable steps to retrieve it; or
 - (b) the deposition of the relevant litter was done in good faith in urgent response to a civil or other emergency in order to prevent or minimise a genuine risk to the safety of persons or property; or

Litter Amendment Act 2010
Act No. of

s. 9

- (c) the deposition of the relevant litter was an unavoidable consequence of a lawful activity.
- (9) For the purposes of subsection (8)(c), a consequence is taken to be unavoidable if at the relevant time there was no reasonably practicable way of avoiding it.
- (10) Nothing in this section applies to, or prevents –
 - (a) the deposition of litter in accordance with any authority lawfully given by or on behalf of the State Crown; or
 - (b) the deposition of litter in a municipal area in accordance with any authority lawfully given by or on behalf of its council; or
 - (c) the deposition of litter in any place if there is lawful authority to do so; or
 - (d) the placement in a public place of a council-supplied receptacle, containing litter from a private property adjacent to or near that public place, for the litter to be removed by and in accordance with the publicised protocols of a council's routine garbage collection or recycling service; or

Litter Amendment Act 2010
Act No. of

s. 9

- (e) the placement in a public place of green waste, from a private property adjacent to or near that public place, for removal by and in accordance with the publicised protocols of a council's green-waste collection service; or
- (f) the placement of unwanted household items, from a private residence adjacent to or near that public place, for removal by and in accordance with the publicised protocols of a council's periodic clean-up or recycling service.

(11) In this section –

“markings” includes words and signs;

“minor offence” means an offence involving only a single item of personal litter;

“nature”, of litter, means its nature having regard to –

- (a) its composition; and
- (b) its size, shape and volume; and
- (c) its odour, viscosity, combustibility and perishability; and

Litter Amendment Act 2010
Act No. of

s. 9

- (d) its potentialities to cause, in either its instant or a transformed state, a safety, health or environmental hazard;

“personal litter” means litter consisting of, or like, any of the following:

- (a) a bus, movie or parking ticket;
- (b) an automatic bank teller docket or sales receipt;
- (c) a cigarette butt or piece of chewing gum;
- (d) a lolly wrapper, crisp packet, sandwich container or food sachet;
- (e) a drinking straw or soft drink bottle;
- (f) the core or skin of a piece of fruit;
- (g) a fried potato chip;

“suitable” includes safe.

Litter Amendment Act 2010
Act No. of

s. 10

10. Section 11 amended (Unsolicited documents must be put in mailboxes, &c.)

Section 11(1) of the Principal Act is amended by omitting “he or she” and substituting “the person”.

11. Section 12 substituted

Section 12 of the Principal Act is repealed and the following section is substituted:

12. Leaflets, &c., not to be placed on vehicles or vessels

(1) A person must not deposit any document on a motor vehicle, or trailer, that is –

(a) in any public place; or

(b) in any designated car park.

Penalty: Fine not exceeding 20 penalty units.

(2) A person must not deposit any document on a vessel.

Penalty: Fine not exceeding 20 penalty units.

(3) Subsections (1) and (2) do not apply to a person if the person –

(a) is exercising a power given to the person by or under any law; or

Litter Amendment Act 2010
Act No. of

s. 11

- (b) has the consent of the person apparently in charge of the relevant motor vehicle, trailer or vessel; or
 - (c) has the consent of the registered owner or, as the case may be, registered operator of the relevant motor vehicle, trailer or vessel.
- (4) The conditions of an express or implied contract relating to the parking of motor vehicles in a designated car park do not constitute a lawful power for the purposes of subsection (3)(a), except in respect of documents relating specifically to the management of parking in that designated car park.
- (5) For the purposes of subsection (3)(b), a person is entitled to assume that –
 - (a) an adult seated in the driver's seat of a motor vehicle is in charge of that motor vehicle; and
 - (b) an adult seated in the driver's seat of a motor vehicle to which a trailer is connected is in charge of that trailer; and
 - (c) an adult seated or standing at the helm of a vessel is in charge of that vessel; and
 - (d) a person who is driving a motor vehicle alone is an adult.

Litter Amendment Act 2010
Act No. of

s. 11

(6) In this section –

“adult” means a person who is, or who could reasonably be taken from his or her appearance to be, 17 years of age or older;

“contract” includes a permit;

“designated car park” means –

- (a) a building or open area in which members of the public may park motor vehicles for a fee, and includes any car park of that kind run by government; or
- (b) an area within, next to or near a government office and in which motor vehicles may be parked (with or without fee) by persons who work at, service or have dealings with that government office; or
- (c) an area within, next to or near premises used for a business or professional practice and in which motor vehicles may be parked (with or without fee) by persons who work at, service or are

Litter Amendment Act 2010
Act No. of

s. 12

customers or clients of
that business or practice;
or

(d) an area within, next to or
near a health or
educational facility and in
which motor vehicles may
be parked (with or
without fee) by persons
who work at, service,
attend or visit that facility;
or

(e) an area within, next to or
near a cultural, sporting or
recreational venue and in
which motor vehicles may
be parked (with or
without fee) by persons
who work at, service or
patronise that venue;

“government” means any council, the
State Crown or any agency or
instrumentality of the State
Crown.

12. Section 13 amended (Bill-posting without consent)

Section 13 of the Principal Act is amended by
inserting “or unless the person affixing the
document is exercising a power given to the
person under any law” after “the structure”.

13. Section 16 amended (Duty of person authorising or arranging for unsolicited document)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a document that is distributed, or intended to be distributed, as”;
- (b) by omitting from subsection (1) “deposited” and substituting “distributed”;
- (c) by omitting subsection (2) and substituting the following subsection:
 - (2) It is a defence in proceedings for an offence under this section if the defendant establishes that the defendant took reasonable steps to comply with this section.

14. Section 17 amended (Infringement notice)

Section 17 of the Principal Act is amended as follows:

- (a) by omitting subsection (3) and substituting the following subsection:
 - (3) An infringement notice may be –
 - (a) served on the person who the authorised officer reasonably believes

Litter Amendment Act 2010
Act No. of

s. 14

committed the relevant
infringement offence; or

(b) served on the registered
operator of a motor
vehicle or trailer if the
relevant infringement
offence relates to the use
of the motor vehicle or
trailer and the authorised
officer does not have a
reasonable belief as to the
identity of the person who
committed the
infringement offence; or

(c) served on the registered
owner of a vessel if the
relevant infringement
offence relates to the use
of the vessel and the
authorised officer does
not have a reasonable
belief as to the identity of
the person who
committed the
infringement offence.

(b) by omitting subsections (6) and (7) and
substituting the following subsections:

(6) In addition to any other manner
of service –

(a) an infringement notice
may be served on the

Litter Amendment Act 2010
Act No. of

s. 14

registered operator of a motor vehicle or trailer by leaving it in or on, or attaching it to, the motor vehicle or trailer in a prominent place; and

- (b) an infringement notice may be served on the registered owner of a vessel by leaving it in or on, or attaching it to, the vessel in a prominent place.
- (7) Within 28 days after being served with an infringement notice under subsection (3)(b), the registered operator of a motor vehicle or trailer may give the authorised officer, or other person or entity, specified in the infringement notice a statutory declaration stating –
- (a) the name and address, so far as known to the registered operator, of the person who the registered operator believes committed the relevant infringement offence; or
 - (b) the name and address, so far as known to the registered operator, of the

Litter Amendment Act 2010
Act No. of

s. 14

person who the registered operator believes was in charge of the motor vehicle or trailer when the relevant infringement offence allegedly occurred; or

(c) that the motor vehicle or trailer was being driven or used without the knowledge or consent of the registered operator when the relevant infringement offence allegedly occurred; or

(d) that the registered operator had no right or interest in the motor vehicle or trailer when the relevant infringement offence allegedly occurred.

(7A) Within 28 days after being served with an infringement notice under subsection (3)(c), the registered owner of a vessel may give the authorised officer, or other person or entity, specified in the infringement notice a statutory declaration stating –

(a) the name and address, so far as known to the

Litter Amendment Act 2010
Act No. of

s. 14

registered owner, of the person who the registered owner believes committed the relevant infringement offence; or

- (b) the name and address, so far as known to the registered owner, of the person who the registered owner believes was in charge of the vessel when the relevant infringement offence allegedly occurred; or
 - (c) that the vessel was being used without the knowledge or consent of the registered owner when the relevant infringement offence allegedly occurred; or
 - (d) that the registered owner had no right or interest in the vessel when the relevant infringement offence allegedly occurred.
- (7B) Within 28 days after being served with an infringement notice under subsection (3), a person named in a statutory declaration pursuant to subsection (7)(a) or (b) or

Litter Amendment Act 2010
Act No. of

s. 14

subsection (7A)(a) or (b) (“nominated offender”) may give the authorised officer, or other person or entity, specified in the infringement notice a statutory declaration stating –

- (a) the name and address, so far as known to the nominated offender, of the person who the nominated offender believes committed the relevant infringement offence; or
- (b) the name and address, so far as known to the nominated offender, of the person who the nominated offender believes was in charge of the relevant motor vehicle, trailer or vessel when the relevant infringement offence allegedly occurred.
- (c) by omitting from subsection (8) “subsection (7)” and substituting “subsection (7), (7A) or (7B)”;
- (d) by omitting subsection (9) and substituting the following subsection:

- (9) Where, pursuant to subsection (7), (7A) or (7B), a person is named in a statutory declaration as having committed an infringement offence or as having been in charge of a motor vehicle, trailer or vessel when an infringement offence relating to its use allegedly occurred, the statutory declaration is, in any proceedings against the person in respect of the infringement offence, evidence that the person committed the infringement offence or was in charge of the motor vehicle, trailer or vessel when the infringement offence allegedly occurred.

15. Section 18 inserted

After section 17 of the Principal Act, the following section is inserted in Division 3:

18. Claiming statutory exception to liability of registered operator or owner

- (1) This section applies if a person served with an infringement notice wishes to claim the benefit of the exception conferred by section 30.
- (2) Within 28 days after being served with the infringement notice, the person may provide to the authorised officer, or other

Litter Amendment Act 2010
Act No. of

s. 16

person or entity, specified in the infringement notice a statutory declaration –

- (a) declaring that the exception conferred by section 30(1) or, as the case may be, section 30(2) applies to the relevant infringement offence; and
 - (b) setting out, by reference to the terms of the paragraphs contained in that section, the factual basis for declaring that the exception applies to the relevant infringement offence.
- (3) The statutory declaration is to be treated as an application for withdrawal of the infringement notice under section 15 or 17 of the *Monetary Penalties Enforcement Act 2005*.
- (4) Nothing in this section limits the operation of section 17.

16. Part 3, Division 4: Heading amended

Division 4 of Part 3 of the Principal Act is amended by omitting “***Owner onus***” from the heading to that Division and substituting “***Onus of registered operators and owners***”.

17. Section 24 amended (Onus of registered operator in respect of motor vehicle or trailer)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “arising from the use, driving, parking, standing or leaving” and substituting “relating to the use”;
- (b) by omitting from subsection (1)(b) “immediately”;
- (c) by omitting from subsection (1) “he or she” twice occurring and substituting “the registered operator”;
- (d) by omitting subsection (2) and substituting the following subsection:
 - (2) It is a defence in proceedings for an offence under this section if the registered operator establishes that –
 - (a) the offence was committed by another person; or
 - (b) when the offence occurred –
 - (i) the relevant motor vehicle or trailer was being used without the

Litter Amendment Act 2010
Act No. of

s. 18

- registered
operator's
knowledge or
consent; or
- (ii) a person other
than the registered
operator was in
charge of the
relevant motor
vehicle or trailer;
or
- (iii) the registered
operator had no
right or interest in
the relevant motor
vehicle or trailer.

18. Section 24A inserted

After section 24 of the Principal Act, the
following section is inserted in Division 4:

24A. Onus of registered owner in respect of vessel

(1) If –

- (a) an offence against this Act
relating to the use of a vessel has
been committed; and
- (b) the identity of the person who
committed the offence cannot be
established –

the registered owner of the vessel is taken to have committed the offence, whether or not the registered owner was using or in charge of the vessel at the time of the offence, unless the registered owner can establish a defence under this section.

- (2) It is a defence in proceedings for an offence under this section if the registered owner establishes that –
- (a) the offence was committed by another person; or
 - (b) when the offence occurred –
 - (i) the relevant vessel was being used without the registered owner's knowledge or consent; or
 - (ii) a person other than the registered owner was in charge of the relevant vessel; or
 - (iii) the registered owner had no right or interest in the relevant vessel.
- (3) Subsection (2) does not exclude any other defence provided by law.

Litter Amendment Act 2010
Act No. of

s. 19

19. Section 25 amended (Proceedings in respect of registered operator or owner onus liability)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “he or she” and substituting “the defendant”;
- (b) by omitting from subsection (1)(a) “his or her” and substituting “the”;
- (c) by omitting from subsection (1)(b) “motor vehicle or trailer” and substituting “relevant motor vehicle, trailer or vessel”;
- (d) by omitting subsection (2) and substituting the following subsection:
 - (2) Subsection (1) does not apply to a defendant who has previously provided a statutory declaration under and in accordance with section 17(7), (7A) or (7B).
- (e) by omitting from subsection (3) “section 24” and substituting “section 24 or 24A”;
- (f) by inserting in subsection (5) “or section 24A(1)” after “section 24(1)”.

20. Section 26 amended (Evidentiary effect of statutory declaration in proceedings against another person)

Section 26 of the Principal Act is amended as follows:

- (a) by inserting “or registered owner” after “operator”;
- (b) by omitting paragraphs (a) and (b) and substituting the following paragraphs:
 - (a) the named person was in charge of the relevant motor vehicle, trailer or vessel when the offence occurred; or
 - (b) the named person was a passenger in or on that motor vehicle, trailer or vessel at that time.

21. Section 27 substituted

Section 27 of the Principal Act is repealed and the following sections are substituted:

27. More than one person registered as operator of motor vehicle or trailer

- (1) If 2 or more persons are, jointly, the registered operator of a motor vehicle or trailer, proceedings for a deemed offence concerning that motor vehicle or trailer may be brought against –

Litter Amendment Act 2010
Act No. of

s. 21

- (a) one of those persons; or
 - (b) more than one of those persons jointly.
- (2) If subsection (1)(a) applies, the court may find the defendant guilty of the deemed offence if satisfied that –
 - (a) the offence has been committed; and
 - (b) the defendant has not established a statutory defence.
- (3) If subsection (1)(b) applies, the court may, whether the charge against the defendants is heard together or separately, find any defendant guilty of the deemed offence if satisfied that –
 - (a) the offence has been committed; and
 - (b) the defendant has not established a statutory defence.
- (4) If subsection (1)(b) applies and more than one defendant is found guilty of the deemed offence, the total amount of any fines imposed on the defendants is not to exceed, in aggregate, the maximum fine that could have been imposed if only one of them had been found guilty of the offence.
- (5) In this section –

“deemed offence” means an offence against this Act relating to the use of a motor vehicle or trailer, being an offence that, pursuant to section 24(1), is taken to have been committed by the registered operator of the motor vehicle or trailer.

28. More than one person registered as owner of vessel

- (1) If 2 or more persons are, jointly, the registered owner of a vessel, proceedings for a deemed offence concerning that vessel may be brought against –
 - (a) one of those persons; or
 - (b) more than one of those persons jointly.
- (2) If subsection (1)(a) applies, the court may find the defendant guilty of the deemed offence if satisfied that –
 - (a) the offence has been committed; and
 - (b) the defendant has not established a statutory defence.
- (3) If subsection (1)(b) applies, the court may, whether the charge against the defendants is heard together or separately, find any defendant guilty of the deemed offence if satisfied that –

Litter Amendment Act 2010
Act No. of

s. 22

- (a) the offence has been committed;
and
 - (b) the defendant has not established
a statutory defence.
- (4) If subsection (1)(b) applies and more than one defendant is found guilty of the deemed offence, the total amount of any fines imposed on the defendants is not to exceed, in aggregate, the maximum fine that could have been imposed if only one of them had been found guilty of the offence.
- (5) In this section –
 - “**deemed offence**” means an offence against this Act relating to the use of a vessel, being an offence that, pursuant to section 24A(1), is taken to have been committed by the registered owner of the vessel.

22. Section 29 amended (Bodies corporate and joint registered operators and owners)

Section 29(1) of the Principal Act is amended as follows:

- (a) by inserting “, or on a person who is a joint registered owner of a vessel” after “trailer”;

- (b) by inserting in paragraph (a) “or, as the case may be, section 46A” after “section 46”.

23. Section 30 substituted

Section 30 of the Principal Act is repealed and the following section is substituted:

30. Exceptions to liability of registered operators and owners

- (1) Where an offence against this Act relating to the use of a motor vehicle has been committed, section 24 does not apply if, at the relevant time –
 - (a) the motor vehicle was, pursuant to section 7 of the *Passenger Transport Act 1997*, registered as a public passenger vehicle under the *Vehicle and Traffic Act 1999*; and
 - (b) the motor vehicle was being used, lawfully, to carry passengers for consideration; and
 - (c) the offence was committed by one or more of the passengers.
- (2) Where an offence against this Act relating to the use of a vessel has been committed, section 24A does not apply if, at the relevant time –

Litter Amendment Act 2010
Act No. of

s. 24

- (a) the vessel was being used, lawfully, to carry passengers for consideration; and
 - (b) the offence was committed by one or more of the passengers.
- (3) In this section –

“consideration” includes –

- (a) a fare; and
- (b) promotional purposes and commercial goodwill; and
- (c) a charter party;

“passengers”, being carried by a motor vehicle or vessel, includes, as the case requires, passengers boarding or alighting or embarking or disembarking.

24. Section 31 repealed

Section 31 of the Principal Act is repealed.

25. Section 39 amended (Reports of offences)

Section 39 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Secretary” and substituting “Director”;

- (b) by omitting from subsection (2) “Secretary” and substituting “Director”;
- (c) by omitting from subsection (2) “issued to” and substituting “issued and served on”.

26. Section 40 amended (False or misleading statements)

Section 40(1) of the Principal Act is amended by omitting “Secretary” and substituting “Director”.

27. Section 41 amended (Powers of authorised officers)

Section 41(5) of the Principal Act is amended by omitting “person” and substituting “officer”.

28. Sections 45 and 46 substituted

Sections 45 and 46 of the Principal Act are repealed and the following sections are substituted:

45. Direction by police officers in connection with offences

- (1) This section applies if a police officer –
 - (a) finds a person committing an offence against this Act; or

Litter Amendment Act 2010
Act No. of

s. 28

- (b) reasonably believes that a person has committed an offence against this Act or is about to do so.
- (2) The police officer may give the person such directions as the police officer considers necessary or expedient for the purposes of enforcing this Act.
- (3) If the person is in, or on, a vehicle or vessel that another person appears to be in charge of, then the police officer, whether or not any direction is given under subsection (2), may give the person apparently in charge of the vehicle or vessel such directions as the police officer considers necessary or expedient for the purposes of enforcing this Act.
- (4) If the police officer gives a direction under subsection (2) or (3), the person who is given the direction must obey it whether or not, by so doing, the person may contravene the *Road Rules* or any rules of navigation.

Penalty: Fine not exceeding 10 penalty units.

- (5) It is a defence to the prosecution of a person for an offence against the *Road Rules* or any rules of navigation that, at the relevant time, the person was obeying a direction given to the person under subsection (2) or (3).

(6) In this section –

“rules of navigation” means any law relating to the pilotage, navigation or safe operation or berthing of vessels in State waters.

46. Facilitation of proof of certain matters concerning motor vehicles and trailers

(1) This section applies if –

- (a) an authorised officer reasonably suspects that an offence involving the use of a motor vehicle or trailer has been committed against this Act; and
 - (b) the authorised officer does not know, or is uncertain of, the identity or whereabouts of the person using or in charge of the motor vehicle or trailer at the relevant time (“the suspected litterer”).
- (2) The authorised officer may demand that the registered operator of the motor vehicle or trailer, or any third party, give the authorised officer such information as the authorised officer may require in attempting to establish the identity or whereabouts of the suspected litterer.
- (3) The registered operator of the motor vehicle or trailer or, as the case may be,

Litter Amendment Act 2010
Act No. of

s. 29

the third party must comply with the
authorised officer's demand.

Penalty: Fine not exceeding 10 penalty
units.

- (4) Where any information demanded of the registered operator of the motor vehicle or trailer is not known to the registered operator, the registered operator must with all reasonable diligence (proof of which lies on the registered operator) take steps to obtain the information and report to the authorised officer, within 7 days after the day on which the demand is made, the results of the steps so taken.

Penalty: Fine not exceeding 10 penalty
units.

- (5) In this section –

“third party” means any person who,
in the reasonable opinion of the
authorised officer, may have
information concerning the
relevant suspected offence.

29. Section 46A inserted

After section 46 of the Principal Act, the
following section is inserted in Part 4:

46A. Facilitation of proof of certain matters concerning vessels

- (1) This section applies if –
 - (a) an authorised officer reasonably suspects that an offence involving a vessel has been committed against this Act; and
 - (b) the authorised officer does not know, or is uncertain of, the identity or whereabouts of the person using or in charge of the vessel at the relevant time (“the suspected litterer”).
- (2) The authorised officer may demand that the registered owner of the vessel, or any third party, give the authorised officer such information as the authorised officer may require in attempting to establish the identity or whereabouts of the suspected litterer.
- (3) The registered owner of the vessel or, as the case may be, the third party must comply with the authorised officer’s demand.

Penalty: Fine not exceeding 10 penalty units.

- (4) Where any information demanded of the registered owner of the vessel is not known to the registered owner, the registered owner must with all reasonable

Litter Amendment Act 2010
Act No. of

s. 30

diligence (proof of which lies on the registered owner) take steps to obtain the information and report to the authorised officer, within 7 days after the day on which the demand is made, the results of the steps so taken.

Penalty: Fine not exceeding 10 penalty units.

(5) In this section –

“**third party**” means any person who, in the reasonable opinion of the authorised officer, may have information concerning the relevant suspected offence.

30. Section 48 amended (Litter Management Fund)

Section 48 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “prescribed”;
- (b) by omitting from subsection (2)(a) “or an authorised officer appointed under section 8” and substituting “, by an authorised officer appointed under section 8 or by a person who is an authorised officer by virtue of section 8A(b)”;
- (c) by omitting from subsection (3)(b) “Secretary” and substituting “Director”.

31. Section 49 amended (Protection from liability)

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “Secretary” twice occurring and substituting “Director”;
- (b) by omitting “Secretary” third occurring and substituting “Director”.

32. Section 50 amended (Delegation of functions, &c., by Director)

Section 50 of the Principal Act is amended by omitting “Secretary” twice occurring and substituting “Director”.

33. Section 50A inserted

After section 50 of the Principal Act, the following section is inserted in Part 6:

50A. Exemptions

- (1) A person or a representative of a class of persons may apply to the Director for an exemption from compliance with this Act or a provision of this Act.
- (2) The application –
 - (a) is to be in an approved form; and

Litter Amendment Act 2010
Act No. of

s. 33

- (b) must be accompanied by a fee of 80 fee units or, if another fee is prescribed by regulations in force under this Act, that other fee; and
 - (c) must be supported by such information or evidence as the Director may require, either at the time of lodgement or subsequently.
- (3) The Director may grant the exemption if reasonably satisfied that –
 - (a) it is unnecessary, impracticable or unreasonable in the circumstances for the applicant or relevant class of persons to have to comply with this Act or, as the case may be, the relevant provisions of this Act; and
 - (b) the applicant is a fit and proper person, or, as the case may be, the persons constituting the relevant class are fit and proper persons, to have the benefit of such an exemption.
- (4) The exemption may be granted unconditionally or on such conditions as to duration, place, environmental control, supervision or otherwise as the Director considers appropriate.
- (5) A person must not contravene a condition of an exemption.

Penalty: Fine not exceeding 50 penalty units.

- (6) An exemption is not capable of being transferred.
- (7) The Director may publish an exemption in such ways as he or she considers necessary or expedient in the circumstances.

34. Section 51 substituted

Section 51 of the Principal Act is repealed and the following section is substituted:

51. Evidentiary provision

In any proceedings for an offence against this Act –

- (a) an averment in a complaint that a specified person was the registered operator of a motor vehicle or trailer at a specified time is evidence of that fact; and
- (b) an averment in a complaint that a specified person was the registered owner of a vessel at a specified time is evidence of that fact.

Litter Amendment Act 2010
Act No. of

s. 35

35. Section 51A inserted

After section 51 of the Principal Act, the following section is inserted in Part 6:

51A. Time for instituting proceedings

- (1) Proceedings for an offence against this Act may be instituted at any time within 12 months after it is alleged to have been committed.
- (2) Subsection (1) has effect notwithstanding section 26 of the *Justices Act 1959* or any other law.

36. Section 52 amended (Regulations)

Section 52(2)(c) of the Principal Act is amended by omitting “Secretary” and substituting “Director”.

37. Section 53A inserted

After section 53 of the Principal Act, the following section is inserted in Part 6:

53A. 2010 transitional provisions

Schedule 3 has effect.

38. Schedule 3 inserted

After Schedule 2 to the Principal Act, the following Schedule is inserted:

SCHEDULE 3 – 2010 TRANSITIONAL PROVISIONS
Section 53A

1. 2010 transitional provisions

(1) In this Schedule –

“**amendment day**” means the day on which the *Litter Amendment Act 2010* commences.

(2) A person who held an appointment of authorised officer under section 7 of this Act immediately before the amendment day continues to be an authorised officer under and for the purposes of this Act.

(3) However, for the purposes of section 21 of the *Acts Interpretation Act 1931* in its application to an appointment of the kind referred to in subclause (2) on and after the amendment day, the appointing authority is taken to be the Director.

39. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.