

TASMANIA

LITTER AMENDMENT BILL 2009

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LITTER AMENDMENT BILL 2009

*(Brought in by the Minister for Environment, Parks, Heritage
and the Arts, the Honourable Michelle Anne O'Byrne)*

A BILL FOR

An Act to amend the *Litter Act 2007*, to remove doubt as to the validity of certain infringement notices issued under that Act, to amend the *Litter (Infringement Notices) Regulations 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Litter Amendment Act 2009*.

2. Commencement

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

PART 2 – LITTER ACT 2007 AMENDED

3. Principal Act

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

4. Section 17 substituted

Section 17 of the Principal Act is repealed and the following section is substituted:

17. Infringement notice

(1) In this section –

“infringement offence” means an offence against this Act or regulations made under this Act that is prescribed by such regulations to be an infringement offence.

(2) An authorised officer may issue and serve an infringement notice on a person if he or she reasonably believes that an infringement offence has been committed.

(3) An infringement notice –

(a) may be served on a person the authorised officer reasonably

*No. 38 of 2007

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believes has committed the infringement offence to which the infringement notice relates; or

- (b) if the infringement offence to which the infringement notice relates arises from the use, driving, parking, standing or leaving of a 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, may be served on the registered operator of the motor vehicle or trailer.
- (4) An infringement notice may not be served on a natural person who has not attained the age of 16 years.
- (5) An infringement notice –
- (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
 - (b) is not to relate to 4 or more offences.
- (6) In addition to any other manner in which an infringement notice may be served, it may be served on the registered operator of a motor vehicle or trailer by leaving it in or on, or attaching it to, the motor vehicle or trailer.

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- (7) Within 28 days after an infringement notice is served under subsection (3)(b) on a registered operator of a motor vehicle or trailer in respect of which the infringement offence is alleged to have been committed, the registered operator may provide to 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 infringement offence; or
 - (b) the name and address, so far as known to the registered operator, of the person who the registered operator believes was in charge of the motor vehicle or trailer at the time the infringement offence is alleged to have occurred; or
 - (c) that the motor vehicle or trailer was being driven or used without the knowledge or consent of the registered operator at the time the infringement offence is alleged to have occurred; or
 - (d) that the registered operator had no right or interest in the motor vehicle or trailer at the time the

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infringement offence is alleged to have occurred.

- (8) A statutory declaration made in accordance with subsection (7) 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*.
- (9) If a person is named in a statutory declaration made in accordance with subsection (7) as the person who committed the infringement offence to which the statutory declaration relates or as the person in charge of the motor vehicle or trailer at the time the infringement offence to which the statutory declaration relates is alleged to have been committed, that statutory declaration is evidence, in any proceedings against the person in respect of that offence, that the person so named committed the infringement offence or was in charge of the motor vehicle or trailer at that time, as the case requires.
- (10) Regulations under this Act –
- (a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and

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- (b) may prescribe different penalties for bodies corporate and natural persons.
- (11) In the application of the *Monetary Penalties Enforcement Act 2005* to an infringement notice served under this section –
- (a) an authorised officer is taken to be a public sector body within the meaning of that Act; and
 - (b) a penalty prescribed under subsection (10) in respect of an infringement offence is taken to be the prescribed penalty applicable to that offence for the purposes of section 14(a)(ii) of that Act.

5. Section 28 repealed

Section 28 of the Principal Act is repealed.

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**PART 3 – LITTER (INFRINGEMENT NOTICES)
REGULATIONS 2007 AMENDED**

6. Principal Regulations

In this Part, the *Litter (Infringement Notices) Regulations 2007** are referred to as the Principal Regulations.

7. Regulation 4 substituted

Regulation 4 of the Principal Regulations is rescinded and the following regulation is substituted:

4. Infringement offences and penalties

- (1) For the purposes of the definition of “infringement offence” in section 17(1) of the Act, an offence under a section of the Act specified in Schedule 1 is prescribed to be an infringement offence.
- (2) The relevant penalty specified in Schedule 1 in respect of an infringement offence specified in that Schedule is the penalty applicable to that infringement offence and payable under the infringement notice by a natural person or a body corporate.

*S.R. 2007, No. 125

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8. Schedule 1 amended (Infringement Offences)

The heading to Schedule 1 to the Principal Regulations is amended by omitting “NOTICE”.

PART 4 – MISCELLANEOUS

9. Removal of doubt relating to certain infringement notices

(1) In this section –

“former section 17 of the Principal Act”
means section 17 of the Principal Act as
in force immediately before being
substituted by section 4 of this Act;

“former section 28 of the Principal Act”
means section 28 of the Principal Act as
in force immediately before being
repealed by section 5 of this Act;

“registered operator” has the same meaning
as in the Principal Act;

“substituted regulation 4” means regulation
4 of the *Litter (Infringement Notices)*
Regulations 2007 as substituted by
section 7 of this Act;

**“substituted section 17 of the Principal
Act”** means section 17 of the Principal
Act as substituted by section 4 of this
Act.

(2) If an infringement notice was served on the
registered operator of a motor vehicle or trailer
under former section 17 of the Principal Act or
former section 28 of the Principal Act, or both of
those sections –

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- (a) that infringement notice; and
- (b) the service of that infringement notice; and
- (c) a penalty paid in respect of that infringement notice; and
- (d) a statutory declaration made in respect of that infringement notice; and
- (e) any other act done or omitted to be done in respect of that infringement notice –

are as valid as if substituted section 17 of the Principal Act and substituted regulation 4 were in force at all relevant times and the infringement notice had been served in accordance with substituted section 17.

- (3) If a court makes a finding before 26 February 2009, or under subsection (4), in relation to the validity of –
 - (a) an infringement notice served on the registered operator of a motor vehicle or trailer under former section 17 of the Principal Act or former section 28 of the Principal Act, or both of those sections; or
 - (b) the service of such an infringement notice; or
 - (c) a penalty paid in respect of such an infringement notice; or

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- (d) a statutory declaration made in respect of such an infringement notice; or
- (e) any other act done or omitted to be done in respect of such an infringement notice –

that finding is not affected by the operation of subsection (2).

- (4) If before 26 February 2009 the validity of a matter referred to in subsection (3)(a), (b), (c), (d) or (e) is in issue in proceedings before a court, subsection (2) does not apply to those proceedings or their continuation and determination.

10. Effect of this Act amending *Litter (Infringement Notices) Regulations 2007*

The substitution by this Act of regulation 4 of the *Litter (Infringement Notices) Regulations 2007* does not prevent those regulations, that regulation or any other provision of those regulations from being amended, substituted or rescinded by a subsequent regulation.