

# LITTER AMENDMENT BILL 2009

## Clause Notes

### Clause 1 Title

### Clause 2 Commencement

The Act commences on the day it receives Royal Assent.

## PART 2 – LITTER ACT 2007 AMENDED

### Clause 3 Principal Act

The Act to be amended is the Litter Act 2007 (No. 38 of 2007).

### Clause 4 Section 17 substituted

- An interpretation of “infringement offence” is provided.
- 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.
- An infringement notice –
  - may be served on a person the authorised officer reasonably believes has committed the infringement offence to which the notice relates; or
  - 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, the notice may be served on the registered operator of the motor vehicle or trailer.
- An infringement notice may not be served on a natural person who has not attained the age of 16 years.
- An infringement notice –
  - is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005; and
  - is not to relate to 4 or more offences.
- 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.

- Within 28 days after an infringement notice is served 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 –
  - 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
  - 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
  - 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
  - that the registered operator had no right or interest in the motor vehicle or trailer at the time the infringement offence is alleged to have occurred.
- A statutory declaration (made as above) 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.
- If a person is named in a statutory declaration (made as above) 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.
- Regulations under the Act –
  - may prescribe the penalty applicable to each infringement offence that is payable on acceptance of an infringement notice; and

- o may prescribe different penalties for bodies corporate and natural persons.
- In the application of the Monetary Penalties Enforcement Act 2005 to an infringement notice served under section 17 –
  - o an authorised officer is taken to be a public sector body within the meaning of the Monetary Penalties Enforcement Act; and
  - o a penalty prescribed 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 the Monetary Penalties Enforcement Act.

**Clause 5 Section 28 repealed**

Section 28 of the Principal Act is repealed.

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

**Clause 6 Principal Regulations**

The regulations to be amended are the Litter (Infringement Notices) Regulations 2007 (S.R. No. 127 of 2007). These regulations specify the penalties payable for infringement notices issued for various offences in the Act.

**Clause 7 Regulation 4 substituted**

- For the purposes of the definition of “infringement offence” in section 17(1) of the Principal Act (as amended by this Act), an offence under a section of the Principal Act specified in Schedule 1 of the regulations is prescribed to be an infringement offence.
- 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.

**Clause 8 Schedule 1 amended (Infringement Offences)**

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

**Clause 9 Removal of doubt relating to certain infringement notices**

- Interpretation of various terms is provided for the purposes of this clause.
- 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 –
  - that infringement notice; and
  - the service of that infringement notice; and
  - a penalty paid in respect of that infringement notice; and
  - a statutory declaration made in respect of that infringement notice; and
  - 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 of the Litter (Infringement Notices) Regulations were in force at all relevant times and the infringement notice had been served in accordance with substituted section 17.

- If a court makes a finding before 26 February 2009, or under subsection (4), in relation to the validity of –
  - an infringement notice served on the registered operator of a motor vehicle or trailer for an offence under section 24 of the Principal Act; or
  - the service of such an infringement notice; or
  - a penalty paid in respect of such an infringement notice; or
  - a statutory declaration made in respect of such an infringement notice; or
  - any other act done or omitted to be done in respect of that infringement notice –

that finding is not affected by the operation of the above retrospectivity provision.

- 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, the above retrospectivity provision does not apply to those proceedings or their continuation and determination.

## **Clause 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.

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  - 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, the notice may be served on the registered operator of the motor vehicle or trailer.

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- An infringement notice –
  - is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005; and
  - is not to relate to 4 or more offences.
- 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.
- Within 28 days after an infringement notice is served 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 –
  - 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
  - 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
  - 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
  - that the registered operator had no right or interest in the motor vehicle or trailer at the time the infringement offence is alleged to have occurred.
- A statutory declaration (made as above) is to be treated as an application for withdrawal of the infringement notice under section 15 17 of the Monetary Penalties Enforcement Act 2005.
- If a person is named in a statutory declaration (made as above) 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

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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.

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applicable to that infringement offence and payable under the infringement notice by a natural person or a body corporate.

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

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- 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 –
  - that infringement notice; and
  - the service of that infringement notice; and
  - a penalty paid in respect of that infringement notice; and
  - a statutory declaration made in respect of that infringement notice; and
  - 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 of the Litter (Infringement Notices) Regulations were in force at all relevant times and the infringement notice had been served in accordance with substituted section 17.
- If a court makes a finding before 26 February 2009, or under subsection (4), in relation to the validity of –
  - an infringement notice served on the registered operator of a motor vehicle or trailer for an offence under section 24 of the Principal Act; or
  - the service of such an infringement notice; or
  - a penalty paid in respect of such an infringement notice; or
  - a statutory declaration made in respect of such an infringement notice; or



o any other act done or omitted to be done in respect of that infringement notice –

that finding is not affected by the operation of the above retrospectivity provision.

- 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, the above retrospectivity provision does not apply to those proceedings or their continuation and determination.

### **Clause 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.