

LITTER AMENDMENT BILL 2010

Clause Notes

Clause 1 Short Title

Clause 2 Commencement

The Act commences on the day it receives Royal Assent.

Clause 3 Principal Act

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

Clause 4 Section 3 amended (Interpretation)

- (a) In the definition of “approved”, the word “Director” is substituted for “Secretary”.

All references to the Secretary of the agency will be removed from the Principal Act and replaced by references to the Director of the Environment Protection Authority (EPA). The Director will assume responsibility for the implementation and enforcement of the Act.

- (b) The definition of “authorised officer” is amended, consequential to the amendment of section 7 and insertion of new section 8A.

- (c) A definition of “Director” is inserted, consequential to replacing references to the Secretary by references to the Director throughout the Act.

- (d) The definition of “litter” is amended to include abandoned vessel parts and equipment, to remove doubt that these items are litter.

- (e) The definition of “luxury hire car” is removed. The definition is not required, as any such vehicle is a “public passenger vehicle” (a term used in section 30).

- (f) The definition of “place” is amended to remove reference to a vehicle. The current definition has the effect of applying section 9 and other littering provisions to the interior of vehicles, which is inappropriate. Littering within public buses, for example, can be controlled by public transport operators. The reference to “any waters” is replaced by “State waters” (see note on clause 4(j) below).

- (g) The definition of “public passenger vehicle” is removed. The term is now defined in section 30, the only clause in which the term is used.

- (h) A definition of “registered owner” (of a vessel) is inserted. This is consequential to new sections 17(3)(c) and 24A and related amendments which introduce liability for the registered owners of vessels where an offence is committed relating to the use of a vessel.

- (i) The definition of “Secretary” is removed, consequential to replacing references to the Secretary by references to the Director throughout the Act.

- (j) A definition of “State waters” is inserted. The Act currently uses the terms “waters” and “coastal waters”. The substitution of the term “State waters” will remove doubt that the provisions of the Act apply to littering into estuarine and inland waters as well as coastal waters.

- (k) The definition of “statutory defence” is amended to include reference to section 24A(2), consequential to the insertion of new section 24A.
- (l) The definition of “taxi” is removed. The definition is not required, as any such vehicle is a “public passenger vehicle” (a term used in section 30).
- (m) A definition of “use” of a vehicle or trailer is inserted, so that clauses relating to the use of a vehicle or trailer may be simplified. A definition of “use” (of a vessel) is also inserted, consequential to new sections 17(3)(c) and 24A and related amendments which introduce liability for the registered owners of vessels where an offence is committed relating to the use of a vessel.
- (n) The definition of “vehicle” is replaced. The new definition is worded differently, to remove doubt.
- (o) A definition of “vessel” is inserted, to exclude naval vessels. Enforcement of the new vessel owner liability provisions would be impractical in relation to them.

Clause 5 Section 4 amended (Application of Act)

The reference to “coastal waters” is replaced by “State waters”. The substitution of the term “State waters” will remove doubt that the provisions of the Act apply to littering into estuarine and inland waters as well as coastal waters.

Clause 6 Part 2: Heading amended

The amended heading better reflects the content of Part 2. Some authorised officers are ex-officio rather than appointed.

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

- (a) In subsection (1) the word “Director” is substituted for “Secretary”.
- (b) Subsection (2) is removed, as its content has been moved to new section 8A.
- (c) In subsection (3) the word “Director” is substituted for “Secretary”.
- (d) In subsection (4) the word “Director” is substituted for “Secretary”.

Clause 8 Section 8A inserted

A new section for ex-officio authorised officers is inserted. The section newly prescribes that the EPA Director is an authorised officer for the purposes of the Act. The Director may need to personally exercise authorised officer powers occasionally. The section also newly prescribes that all council general managers are authorised officers. Councils (particularly smaller councils) may on occasions require their general managers to exercise authorised officer powers.

Clause 9**Section 9 substituted**

In the replacement section, tiered offences are grouped under each subsection. The current structure of the section is unwieldy and difficult to follow. The reference to “express” has been removed from the littering in private places provision (refer new subsection (5)) – a requirement for express consent to properly deposit litter is impractical in most private places, e.g. car parks and shopping arcades. Additional exclusions for the lawful deposit of litter have been inserted (refer new subsection (10)). Several minor wording changes have also been made, and definitions inserted, to remove doubt.

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

The words “the person” are substituted for the words “he or she”, to ensure that the section applies to a body corporate as well as a natural person.

Clause 11**Section 12 substituted**

In the replacement section, subsection (1) restricts the offence relating to deposit of documents on vehicles to public places and designated car parks. The offence currently applies in all locations, which is impractical. Subsection (2) introduces an offence of depositing a document on a vessel, mirroring the existing one relating to motor vehicles. Subsection (4), to remove doubt, prescribes that the conditions of an expressed or implied contract do not constitute a lawful power to deposit a document on a vehicle in a car park, except in respect of documents specifically relating to car park management. Subsection (5) provides clarification in relation to the identification of a person in charge of a vehicle or vessel, to remove doubt. Several minor wording changes have also been made, and definitions inserted, to remove doubt.

Clause 12**Section 13 amended (Bill-posting without consent)**

The words “or unless the person affixing the document is exercising a power given to the person under any law” are inserted to mirror a similar exclusion in section 12. Such an exclusion is necessary to allow the affixing of statutory notices and the like to structures.

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

- (a) The amendment removes words that are superfluous, to remove doubt.
- (b) The amendment substitutes the word “distributed” for the word “deposited”, to remove doubt. The word “distributed” is more pertinent to section 16.
- (c) Subsection (2) is replaced with a differently worded subsection, to remove doubt.

Clause 14**Section 17 amended (Infringement notice)**

- (a) Replacement subsection (3) inserts a provision that enables the serving of an infringement notice on the registered owner of a vessel. This mirrors the existing provision enabling an infringement notice to be served on the registered operator of a motor vehicle or trailer. Minor wording changes have also been made, for the removal of doubt.
- (b) Replacement sub-section (6) adds a provision that enables an infringement notice to be served by leaving it on, or attaching it to, a vessel. This mirrors the existing provision relating to motor vehicles and trailers. Sub-regulation (7) is replaced with a differently worded subsection, to remove doubt. Subsection (7A) is inserted to provide for a statutory declaration to be made by the registered operator of a vessel who has received an infringement notice, mirroring the existing provisions relating to motor vehicles and trailers. Subsection (7B) is inserted to enable a person nominated as the offender in a statutory declaration submitted under subsection (7) or (7A) to in turn submit a similar statutory declaration, where that person alleges that he/she was not responsible for the offence. This situation is likely to arise in the case of company-owned vehicles, for example.
- (c) The amendment inserts new cross-references in subsection (8), consequential to new subsections (7A) and (7B).
- (d) Replacement subsection (9) brings vessels within the scope of the subsection, inserts new cross-references consequential to new subsections (7A) and (7B), and amends wording to remove doubt.

Clause 15**Section 18 inserted**

A new section is inserted to provide a mechanism for the implementation of section 30. There is presently no mechanism for the registered operator of a public passenger vehicle to declare that the exception conferred by section 30 applies, after receiving an infringement notice. The new section enables a statutory declaration to be submitted in relation to the relevant criteria in section 30. Section 18 also applies to the registered owners of vessels engaged in passenger transport.

Clause 16**Part 3, Division 4: Heading amended**

The amended heading reflects the content of Division 4 as amended.

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

- (a) The amendment simplifies the wording of section 24(1)(a). A comprehensive definition of “use” of a vehicle is to be inserted in section 3 of the Principal Act (see clause 4(m) of the Bill).
- (b) The amendment removes the word “immediately”, which is too restrictive in terms of enforcement. It may not be possible to immediately establish the identity of a person who committed an offence.
- (c) The words “registered operator” are substituted for the words “he or she”, to ensure that the section applies to a body corporate as well as a natural person.

- (d) Subsection (2) is replaced with a differently worded subsection, to remove doubt.

Clause 18 Section 24A inserted

A new section is inserted which provides that registered owners of vessels are liable for littering from their vessels, in the same manner as the existing motor vehicle registered operator onus in section 24.

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

- (a) The words “the defendant” are substituted for the words “he or she”, to ensure that the section applies to a body corporate as well as a natural person.
- (b) The word “the” is substituted for the words “he or she”, to ensure that the section applies to a body corporate as well as a natural person.
- (c) The amendment inserts a reference to vessels, consequential to the insertion of section 24A.
- (d) Replacement subsection (2) provides cross-references to the relevant subsections of section 17 and removes an incorrect cross-reference to a repealed section of the Act.
- (e) The amendment inserts an additional cross-reference, consequential to the insertion of section 24A.
- (f) Ditto.

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

- (a) The amendment inserts a reference to the registered owner (of a vessel) consequential to the insertion of section 24A.
- (b) The amendment inserts references to vessels consequential to the insertion of section 24A, and amends wording to remove doubt.

Clause 21 Section 27 substituted

In replacement section 27, references to two registered operators of a vehicle or trailer are replaced with references to two or more registered operators, to allow for the possibility that more than two persons may be joint registered operators. Other wording is amended and a definition provided, for the removal of doubt. New section 28 is inserted with provisions for vessels that mirror those of section 27, consequential to other amendments relating to vessels.

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

The amendment inserts a reference to vessels consequential to other amendments relating to vessels, and a cross-reference to new section 46A consequential to the insertion of that section.

Clause 23 Section 30 substituted

The replacement section removes references to taxis and luxury hire cars and inserts a definition of public passenger vehicle, for consistency with the relevant transport legislation. New subsection (2) provides an exclusion for commercial passenger vessels similar to the existing one for public passenger vehicles. Several minor wording changes have also been made, and definitions inserted, to remove doubt.

Clause 24 Section 31 repealed

Section 31 is replaced by new section 51A (a provision of this type is more appropriately located in Part 6).

Clause 25 Section 39 amended (Reports of offences)

- (a) In subsection (1) the word “Director” is substituted for “Secretary”.
- (b) In subsection (2) the word “Director” is substituted for “Secretary”.
- (c) In subsection (2) the words “issued to” are replaced by the words “Issued and served on”, for consistency with the provisions of section 17.

Clause 26 Section 40 amended (False or misleading statements)

The amendment substitutes the word “Director” for “Secretary”.

Clause 27 Section 41 amended (Powers of authorised officers)

The amendment substitutes the word “officer” for the word “person”, to remove doubt – the term “authorised person” is used nowhere else in the Act.

Clause 28 Sections 45 and 46 substituted

Replacement section 45 inserts provisions relating to vessels. It also inserts a power (in new subsection (3)) for a police officer to give directions to a person in charge of a vehicle or vessel, in addition to or instead of the person who actually committed an offence. A passenger may have committed the offence, but it may be necessary to give instructions to a driver, helmsman or helmswoman in the course of enforcing the Act. In replacement section 46 the section is restructured, reworded and split into subsections to remove doubt. Separate penalties are prescribed for the two distinct offences in the section.

Clause 29 Section 46A inserted

New section 46A is inserted, which provides powers in relation to vessels which mirror those relating to vehicles in section 46.

Clause 30 Section 48 amended (Litter Management Fund)

- (a) The amendment removes the word “prescribed”, to remove doubt – penalties are already prescribed in the Act and Regulations.
- (b) The amendment inserts a cross-reference to new section 8A, consequential on insertion of that section.

(c) The amendment substitutes the word “Director” for “Secretary”.

Clause 31 Section 49 amended (Protection from liability)

The amendments substitute the word “Director” for “Secretary”.

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

The amendment substitutes the word “Director” for “Secretary”.

Clause 33 Section 50A inserted

A new section is inserted which enables the Director to exempt a person or a class of persons from any provision of the Act, subject to any conditions the Director may impose. Provision is made for an application in the approved form accompanied by a fee. The grounds on which an exemption may be granted are specified. An offence of contravening a condition of an exemption is prescribed.

Clause 34 Section 51 substituted

The replacement section inserts a provision relating to vessels, mirroring the existing provision relating to vehicles, consequential to new s.24A and related amendments.

Clause 35 Section 51A inserted

A new section is inserted which replaces existing s.31 and extends the time limit for initiating proceedings from six months to 12 months.

Clause 36 Section 52 amended (Regulations)

The amendment substitutes the word “Director” for “Secretary”.

Clause 37 Section 53A inserted

A new section is inserted which gives effect to Schedule 3.

Clause 38 Schedule 3 inserted

A new schedule is inserted, with transitional provisions prescribing that authorised officer appointments by the Secretary prior to the commencement of the amendments continue in force and are taken to be appointments by the Director.

Clause 39 Repeal of Act

The standard self-repeal clause.