

LITTER AMENDMENT BILL 2009

Fact Sheet

This Bill amends the Litter Act 2007. The Act, which substantially commenced in December 2007, resulted from a review of the former Litter Act 1973. The Act prescribes three levels of littering offences and penalties, depending on the amount littered. Single items such as cigarette butts and bus tickets, amounts of litter less than 55 litres in volume and amounts greater than 55 litres in volume attract progressively higher penalties. Bill-posting, placement of documents on vehicles and insecure delivery of unsolicited documents are also offences under the Act. Infringement notices may be issued for offences or they be prosecuted in court.

Motor vehicle registered operators are deemed liable for littering from their vehicles where the identity of the person committing the offence is unknown. A defence is available if the registered operator can establish that the offence was committed by another person, the motor vehicle was being driven by another person, the vehicle was stolen or the operator no longer had a legal interest in the vehicle. Registered operators are able to complete a statutory declaration to establish their defence, in a similar manner to traffic offences.

The public may report littering offences. Offences, particularly those relating to motor vehicles, are reported to the Litter Hotline that is operated by the Environment Division of the Department of Environment, Parks, Heritage and the Arts. Where a report contains sufficient information to establish that an offence is likely to have been committed an infringement notice is usually issued. Where the offence relates to a motor vehicle the infringement notice is issued to the registered operator of the vehicle.

Amendments to the Litter Act 2007 are urgently required, to remove legal doubt about the validity of provisions which enable an infringement notice to be issued to the registered operator of a motor vehicle as described above. The Office of the Solicitor-General advises that it is less than certain that a court would uphold an infringement notice issued in respect of the registered operator of a vehicle in reliance upon the operator onus provisions in the Act as they currently stand.

The Bill has been assessed under the Legislation Review Program and has been found not to restrict competition or have a significant negative impact on business.

The main provisions of the Bill are as follows.

- Section 17 of the Act, which provides for the issue of infringement notices, is substituted by a new section. The new section removes doubt about the operation of the current section 17 as it relates to motor vehicle littering offences. Registered operator onus provisions in respect of infringement notices are included in the new section 17.
- Section 28 of the Act is repealed. This section currently includes registered operator onus provisions in respect of infringement notices and is legally doubtful.

- A retrospective provision is included in the Bill. This will ensure the validity of any actions taken in respect of infringement notices since the commencement of the Act. Exceptions are provided where a court has made a finding in respect of the validity of an infringement notice or where the validity of an infringement notice is an issue in proceedings before a court that are already under way. The exceptions are effective only until 26 February 2009.
- Minor consequential amendments are made to the Litter (Infringement Notices) Regulations 2007. These regulations specify penalties payable under infringement notices.