

Contents (2007 - 38)

Litter Act 2007

Long Title

Part 1 - Preliminary

1. Short title
2. Commencement
3. Interpretation
4. Application of Act
5. Objects of Act
6. Act binds Crown

Part 2 - Authorised Officers

7. Power of Director to appoint authorised officers
8. Power of councils to appoint employees as authorised officers
- 8A. Ex-officio authorised officers

Part 3 - Prohibition of Littering

Division 1 - Littering

9. Littering offences

Division 2 - Unsolicited documents and advertising material

10. Meaning of □unsolicited document□
11. Unsolicited documents must be put in mailboxes, &c.
12. Leaflets, &c., not to be placed on vehicles or vessels
13. Bill-posting without consent
14. Advertiser must disclose name of distributor
15. Distributor must disclose name of depositor
16. Duty of person authorising or arranging for unsolicited document

Division 3 - Infringement notices

17. Infringement notice
18. Claiming statutory exception to liability of registered operator or owner
19. Repealed
20. Repealed
21. Repealed
22. Repealed
23. Repealed

Division 4 - Onus of registered operators and owners

24. Onus of registered operator in respect of motor vehicle or trailer
- 24A. Onus of registered owner in respect of vessel
25. Proceedings in respect of registered operator or owner onus liability
26. Evidentiary effect of statutory declaration in proceedings against another person
27. More than one person registered as operator of motor vehicle or trailer
28. More than one person registered as owner of vessel

- 29. Bodies corporate and joint registered operators and owners
- 30. Exceptions to liability of registered operators and owners
- 31. Repealed

Division 5 - Removal and prevention of litter

- 32. Special authority for authorised officers in reserved lands
- 33. Duty of litterer to remove litter
- 34. Court may order removal of litter
- 35. Litter abatement notices
- 36. Form of litter abatement notices
- 37. Amendment or revocation of litter abatement notices
- 38. Recovery of costs arising from litter abatement notices

Division 6 - Reporting of offences by public

- 39. Reports of offences
- 40. False or misleading statements

Part 4 - Powers of Authorised Officers

- 41. Powers of authorised officers
- 42. Obstruction of authorised officers
- 43. Names and addresses of offenders
- 44. Powers of police officers
- 45. Direction by police officers in connection with offences
- 46. Facilitation of proof of certain matters concerning motor vehicles and trailers
- 46A. Facilitation of proof of certain matters concerning vessels
- 47. Evidence of identity and authority

Part 5 - Litter Management Fund

- 48. Litter Management Fund

Part 6 - Miscellaneous and Supplemental

- 49. Protection from liability
- 50. Delegation of functions, &c., by Director
- 50A. Exemptions
- 51. Evidentiary provision
- 51A. Time for instituting proceedings
- 52. Regulations
- 53. Administration of Act
- 53A. 2010 transitional provisions
- 54. Consequential Amendments
- 55. Legislation repealed

Schedule 1 - Consequential Amendments

Schedule 2 - Legislation repealed

Schedule 3 - 2010 Transitional Provisions

Litter Act 2007



Litter Act 2007

An Act to make provision with respect to the control and prevention of litter, to amend the Crown Lands Act 1976 , to repeal the Litter Act 1973 and for other purposes

[Royal Assent 24 October 2007]

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 Act 2007 .

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

approved means approved by the Director;

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;

corresponding law means a law of another State or a Territory of Australia dealing with either or both of the following subjects:

- (a) the driving of motor vehicles on roads;
- (b) the use of motor vehicles and trailers on roads;

deposit, in respect of litter, includes –

- (a) drop or throw litter in, on or into a place; and
- (b) leave litter in or on a place; and
- (c) put litter in such a location that it falls, descends, blows, is washed, percolates or otherwise escapes or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or from a place; and
- (d) cause, permit or allow litter to fall, descend, blow, be washed, percolate or otherwise escape into or from a place;

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

document means any record of information and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writing can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph;

escape includes fall, descend and percolate, and be blown or washed, into, on or from any place;

Fund means the Litter Management Fund established under section 48 ;

general manager means the general manager of a council appointed under the Local Government Act 1993 ;

infringement notice means an infringement notice served in accordance with Division 3 of Part 3 ;

land means any land, whether publicly or privately owned, and includes any buildings or other structures permanently affixed to the land;

litter includes –

- (a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limitation, includes any glass, metal, plastic, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, abandoned vessel parts and equipment, construction or demolition material, garden remnants and clippings, soil, sand and rocks; and
- (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place –

whether or not the litter has any value when or after being deposited in or on the place;

litter abatement notice means a litter abatement notice served under section 35 ;

motor vehicle has the meaning given by the Vehicle and Traffic Act 1999 ;

open private place means a private place that is situated –

- (a) in or on land and that is not within a building on the land; or
- (b) in or on waters;

place includes –

- (a) a receptacle; and
- (b) any State waters;

registered operator of a motor vehicle or trailer has the meaning assigned to that expression under the Vehicle and Traffic Act 1999 and includes –

- (a) the registered operator of the motor vehicle or trailer within the meaning of a corresponding law; and
- (b) in the case of a motor vehicle or trailer to which a trade plate or similar device is affixed under the Vehicle and Traffic Act 1999 or under a corresponding law, the person to whom the trade plate or device has been issued; and
- (c) in the case of a motor vehicle or trailer for which a short term unregistered vehicle permit or similar permit has been issued under the Vehicle and Traffic Act 1999 or under a corresponding law, the person to whom the permit has been issued;

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 surveyed in another jurisdiction, the person who is registered or recorded as its owner under the law of that jurisdiction;

reserved land has the same meaning as in the Nature Conservation Act 2002 ;

small passenger vehicle means a motor vehicle with a seating capacity of less than 13 adults, including the driver, that is designed and constructed primarily for the carriage of passengers;

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 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;

statutory defence means a defence provided by section 24(2) or section 24A(2) ;

trailer has the meaning given by the Vehicle and Traffic Act 1999 ;

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 –

(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;

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

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;

warrant means a warrant under the Search Warrants Act 1997 .

4. Application of Act

(1) The application of this Act extends to –

(a) all Crown land; and

(b) all State waters.

(2) Subsection (1)(a) has effect notwithstanding section 35 of the National Parks and Reserves Management Act 2002 .

(3) Subject to subsection (2) , this Act does not derogate from the provisions of any other Act.

5. Objects of Act

The objects of this Act are –

(a) to prohibit the deposit of litter in the environment; and

(b) to regulate the distribution of materials that may become litter; and

(c) to facilitate the removal of litter; and

(d) generally to protect and enhance the quality of the Tasmanian environment.

6. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 - Authorised Officers

7. Power of Director to appoint authorised officers

(1) The Director may appoint –

- (a) State Service officers and State Service employees appointed or employed in the Department; or
- (b) with the consent of the Head of another Agency, State Service officers and State Service employees appointed or employed in that Agency –

as authorised officers for the purposes of this Act, and those persons may exercise the powers and perform the functions of an authorised officer in conjunction with State Service employment.

(2)

(3) The Director may, with the consent of any person, appoint that person or an employee of that person as an authorised officer.

(4) An appointment as an authorised officer may be made on such terms and conditions as the Director determines and, in particular, the instrument of appointment may provide that all or any of the powers conferred on an authorised officer by this Act may be exercised exclusively in respect of reserved lands or exclusively in respect of lands other than reserved lands.

8. Power of councils to appoint employees as authorised officers

The general manager of a council may appoint an employee of the council to be an authorised officer for the purposes of this Act.

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.

PART 3 - Prohibition of Littering

Division 1 - Littering

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 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.

(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 open private place if the person –

- (a) is not the owner or occupier of the open private place; and
- (b) does not have the consent of the owner or occupier of the open private place to deposit the litter in the open private place.

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 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
- (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
- (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
- (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.

Division 2 - Unsolicited documents and advertising material

10. Meaning of “unsolicited document”

For the purposes of this Division, a document is taken to be unsolicited if it is deposited at any premises without being addressed by name to a person who owns or occupies the premises.

11. Unsolicited documents must be put in mailboxes, &c.

(1) A person delivering an unsolicited document to any premises must not deposit the document in any place on the premises unless the person places the document securely –

- (a) in a receptacle, slot or other place that is used for the deposit of mail at the premises; or
- (b) in a receptacle or slot that is used for the deposit of newspapers at the premises; or
- (c) under the door of the premises; or
- (d) in a place that is in a building and is suitable for the deposit of the document.

Penalty: Fine not exceeding 20 penalty units.

(2) Subsection (1) does not apply to –

- (a) any newspaper, or any material folded or inserted into a newspaper; or
- (b) any document issued or distributed under, in accordance with, or for the purposes of, any Act of Tasmania or the Commonwealth; or
- (c) any document that is given personally to a person at the premises; or
- (d) any document that is of such a size, shape or volume that it is not possible or appropriate for it to be deposited in accordance with subsection (1) .

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
- (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.

- (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 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.

13. Bill-posting without consent

A person must not affix any document on to any fixed structure without the express consent of the owner, occupier or manager of the structure or unless the person affixing the document is exercising a power given to the person under any law.

Penalty: Fine not exceeding 20 penalty units.

14. Advertiser must disclose name of distributor

A person who authorises or arranges for the distribution of an unsolicited document must, within 7 days after receiving a written request for the information from an authorised officer, give to the authorised officer the name and address of the person who is responsible for distributing the document in any area.

Penalty: Fine not exceeding 20 penalty units.

15. Distributor must disclose name of depositor

A person who engages another person (whether as an employee or as an agent) to deposit unsolicited documents at premises within an area must, within 7 days after receiving a written request for the information from an authorised officer, give the authorised officer the name and address of that other person.

Penalty: Fine not exceeding 20 penalty units.

16. Duty of person authorising or arranging for unsolicited document

(1) A person who authorises or arranges for the distribution of an unsolicited document must ensure that the document is distributed in a way that prevents it from becoming litter.

Penalty: Fine not exceeding 20 penalty units.

(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.

Division 3 - Infringement notices

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 may be –

(a) served on the person who the authorised officer reasonably believes 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.

(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 of service –

(a) an infringement notice 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 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 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 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 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.

(8) A statutory declaration made in accordance with subsection (7) , (7A) or (7B) 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) 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.

(10) Regulations under this Act –

(a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and

(b) may prescribe different penalties for bodies corporate and natural persons.

(11)

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 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 .

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Division 4 - Onus of registered operators and owners

24. Onus of registered operator in respect of motor vehicle or trailer

(1) If –

(a) an offence against this Act relating to the use of a motor vehicle or trailer has been committed; and

(b) the identity of the person who committed the offence cannot be established –

the registered operator of the motor vehicle or trailer, as the case may be, is taken to have committed the offence, whether or not the registered operator was driving, or in charge of, the motor vehicle or trailer at the time of the offence unless the registered operator can establish a defence under this section.

(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 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.

(3) Subsection (2) does not exclude any other defence provided by law.

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.

25. Proceedings in respect of registered operator or owner onus liability

(1) A defendant is not entitled to rely on a statutory defence unless, within 21 days after being served with a complaint and summons relating to the offence, the defendant gives to the clerk of the court specified in the summons –

- (a) written notice of the intention to rely on the statutory defence; and
- (b) a statutory declaration giving particulars of that defence including, if it is alleged that the relevant motor vehicle, trailer or vessel was in the charge of another person or that the offence was committed by another person, particulars, so far as known to the defendant, of the name and address of that other person.

(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).

(3) Proceedings must not be heard in respect of an offence arising under section 24 or 24A unless the defendant was, at the time of being served with the complaint and summons, notified in writing of the provisions of that section and this section.

(4) A complaint and summons in any such proceedings is to contain an address at which a notice under subsection (1) may be lodged.

(5) Where a penalty has been imposed on, or recovered from, any person in respect of an offence arising under section 24(1) or section 24A(1), a further penalty is not to be imposed on, or recovered from, any other person in respect of the offence.

26. Evidentiary effect of statutory declaration in proceedings against another person

A statutory declaration given by a registered operator or registered owner under section 25(1) , if produced in any proceedings against the person named in it and in respect of the offence to which it relates, is evidence that –

- (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.

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 –

- (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 –

- (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.

29. Bodies corporate and joint registered operators and owners

(1) Where an infringement notice is served on a person who is a joint registered operator of a motor vehicle or trailer, or on a person who is a joint registered owner of a vessel or on a body corporate –

(a) the service is taken to be a demand by an authorised officer under section 46 or, as the case may be, section 46A; and

(b) the notice is to contain a statement of the obligations of that person or body corporate under that section.

(2) For the removal of doubt, it is declared that an infringement notice may be served on a body corporate.

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)

(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 –

(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.

31.

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Division 5 - Removal and prevention of litter

32. Special authority for authorised officers in reserved lands

Where litter has been deposited on any reserved land, the powers conferred by this Division may be exercised by an authorised officer only if so provided in the instrument of his or her appointment.

33. Duty of litterer to remove litter

A person must remove any litter unlawfully deposited by that person if requested to do so by an authorised officer and the removal must be carried out in accordance with any directions given by the authorised officer.

Penalty: Fine not exceeding 50 penalty units.

34. Court may order removal of litter

(1) If a court convicts a person of an offence against this Act, the court may, instead of or in addition to any other penalty, order the person –

(a) to clear away and remove within a specified time the litter deposited by the person or any other litter in or on any place; or

(b) order the person to pay an amount representing the reasonable cost of removal of the litter to the person who, or body which, has the control or management of the land or waters where the litter was deposited by the person convicted.

(2) An order under subsection (1)(a) may require that the litter is to be cleared away and removed under the supervision of a person nominated by the court and in accordance with any directions given by that person.

(3) If a person ordered to clear away and remove litter under subsection (1)(a) fails to do so within the specified time in accordance with any directions given under subsection (2), the court may, on the application of the prosecutor, the person appointed as supervisor or any other person or body mentioned in paragraph (b) of subsection (1), make a further order under that paragraph against the person convicted.

35. Litter abatement notices

(1) If an authorised officer suspects on reasonable grounds that –

(a) a person is carrying on any activity that has caused, or is likely to cause, the deposit of litter contrary to section 9 ; or

(b) litter has been deposited in any place contrary to that section or that litter has escaped, or is likely to escape, from any place –

the authorised officer may serve a litter abatement notice on –

(c) the person carrying out the activity; or

(d) the person who deposited the litter; or

(e) the owner, occupier or person responsible for the management of the place.

(2) If an authorised officer suspects on reasonable grounds that litter has escaped, or is likely to escape, from a motor vehicle or trailer, the authorised officer may serve a litter abatement notice on the registered operator of, or person in charge of, the motor vehicle or trailer.

(3) A litter abatement notice may require the person to do one or more of the following in accordance with any directions given by an authorised officer:

(a) to refrain from depositing litter contrary to section 9 ;

(b) to ensure that no litter escapes from any place owned or occupied by the person or from the motor vehicle or trailer referred to in subsection (2) ;

(c) to remove the litter;

(d) to clean any place that has been affected by the deposit of litter and to restore the place as far as practicable to its former state and condition;

(e) to carry out any activity in such a manner as to prevent or minimise the deposit of litter;

(f) to do, or refrain from doing, any other act, matter or thing so as to ensure that the person does not commit an offence against this Act.

(4) A person who has been served with a litter abatement notice must comply with any directions specified in the notice.

Penalty: Fine not exceeding 50 penalty units.

(5) A person who has been served with a litter abatement notice may appeal to the Magistrates Court (Administrative Appeals Division) for a review of the notice under the Magistrates Court (Administrative Appeals Division) Act 2001 .

36. Form of litter abatement notices

A litter abatement notice –

- (a) is to be in an approved form; and
- (b) is to be signed by the authorised officer giving the notice; and
- (c) is to specify details of the action required to be taken; and
- (d) may specify the time within which the action must be taken; and
- (e) is to state that the notice may be amended or revoked under section 37 ; and
- (f) is to state the penalty for failure to comply with the notice and the liability to pay costs under section 38 ; and
- (g) is to state the right of the person to whom the notice applies to seek a review of the notice in the Magistrates Court (Administrative Appeals Division) under section 35(5) .

37. Amendment or revocation of litter abatement notices

An authorised officer may amend or revoke a litter abatement notice by serving a written notice of amendment or revocation in an approved form on the person to whom the litter abatement notice applies.

38. Recovery of costs arising from litter abatement notices

- (1) If a person fails to remove litter or clear or restore a place in accordance with a litter abatement notice, the Crown or, as the case may be, a council, statutory authority or other body which has the control or management of the place where the offence occurred may cause those measures to be taken.
- (2) The reasonable costs incurred in carrying out those measures –
 - (a) are payable by the person specified in the abatement notice; and
 - (b) are recoverable as a debt in a court of competent jurisdiction.

Division 6 - Reporting of offences by public

39. Reports of offences

- (1) A person who sees another person committing an offence under this Part may inform the Director of the offence by sending a signed written report containing –
 - (a) the date, time and place of the offence, so far as is known to the first-mentioned person; and
 - (b) details of the nature of the litter and of the offence; and
 - (c) any evidence of the identity of the person who committed the offence or evidence which may lead to the identification of that person.
- (2) On the Director receiving a report under subsection (1) , an infringement notice may be issued and served on, or proceedings may be taken against, the person seen committing the offence or the person taken to have committed the offence.

40. False or misleading statements

- (1) A person must not, in giving any information to the Director under this Act –
 - (a) make a statement knowing it to be false or misleading; or
 - (b) omit any matter from a statement knowing that without that matter the statement is misleading.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units.
- (3) This section does not restrict the operation of any other Act or rule of law.

PART 4 - Powers of Authorised Officers

41. Powers of authorised officers

- (1) Subject to this Division, an authorised officer may –
 - (a) enter and inspect any place for any reasonable purpose connected with the administration or enforcement of this Act; and
 - (b) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act; and
 - (c) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information; and
 - (d) take photographs, films and audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act; and
 - (e) give any directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration or enforcement of this Act.
- (2) An authorised officer may not exercise the power of entry under this section except where –
 - (a) the occupier of the place consents to the entry; or
 - (b) the entry is authorised by a warrant; or
 - (c) in the case of a public place, the entry is made when the place is open to the public; or
 - (d) the entry is made when the officer believes on reasonable grounds that an offence against this Act has been, or is being, carried out and the place is open for conduct of business or otherwise open for entry.
- (3) If an entry under this section is made otherwise than under the authority of a warrant, the entry must be made at a time that is reasonable.
- (4) In the exercise of powers under this Act, an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.
- (5) An authorised officer may apply to a justice for a warrant to enter any place to enforce any provision of this Act.
- (6) A warrant continues in force until the purpose for which it was granted is satisfied.

42. Obstruction of authorised officers

A person must not obstruct, hinder, delay, impede or threaten an authorised officer in performing any function or exercising any power under this Act.

Penalty: Fine not exceeding 10 penalty units.

43. Names and addresses of offenders

- (1) If an authorised officer has reasonable grounds for believing that a person has committed, or is committing, an offence against this Act, he or she may require that person to state his or her name and the address of his or her place of residence.
- (2) A person must not fail or refuse to comply with a requirement under subsection (1) or, in response to any such requirement, state a name or address that is false in a material particular.

Penalty: Fine not exceeding 10 penalty units.

44. Powers of police officers

A police officer making a requirement under section 43(1) may arrest, without warrant, a person who fails or refuses to comply with that requirement or who, in response to the requirement, gives a name or address that the police officer has reason to believe is false.

45. Direction by police officers in connection with offences

- (1) This section applies if a police officer reasonably believes that –
 - (a) a person is committing an offence against this Act; or
 - (b) 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, 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.

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 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.

47. Evidence of identity and authority

(1) When exercising powers under this Act, an authorised officer must produce evidence of his or her identity and authority if reasonably required to do so by any person.

(2) It is not necessary for a police officer exercising any power as an authorised officer under this Act to produce any authority other than that required as a police officer.

PART 5 - Litter Management Fund

48. Litter Management Fund

- (1) An account, which is to be known as the Litter Management Fund, is to be established within the Special Deposits and Trust Fund for the purposes of this Act.
- (2) Any payments in respect of a penalty, by way of fine for an offence against this Act or under an infringement notice –
 - (a) are payable to a council if the notice was served, or proceedings were instituted, by the council, by an authorised officer appointed under section 8 or by a person who is an authorised officer by virtue of section 8A(b) ; or
 - (b) in any other case, are payable to the Litter Management Fund unless otherwise directed or approved by the Treasurer.
- (3) There may be paid from the Fund any money that is required –
 - (a) for the payment of the cost of establishing and maintaining a service to enable members of the public to report offences against this Act; and
 - (b) for the payment or discharge of any other expenses, charges or obligations incurred or undertaken by the Director or an authorised officer in the performance of his or her functions or the exercise of his or her powers under this Act; and
 - (c) for any other purpose expedient to give effect to the objects of this Act.

PART 6 - Miscellaneous and Supplemental

49. Protection from liability

Any act, matter or thing done or omitted to be done in good faith by –

- (a) the Director, or a person acting under the direction or authority of the Director; or
- (b) an instrumentality of the Crown; or
- (c) a council; or
- (d) an authorised officer –

in the administration or intended administration of this Act, or in the exercise or performance or intended exercise or performance of any powers, functions or duties under this Act does not subject the Director, instrumentality, council or other person to any liability (whether civil or criminal) in respect of that act, matter or thing.

50. Delegation of functions, &c., by Director

The Director may, in writing, delegate to a body, a State Service officer or State Service employee all or any of the powers, duties and functions of the Director under this Act other than this power of delegation and the powers conferred by section 7 .

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
 - (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.

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.

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.

52. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
 - (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) provide for any matter to be approved by the Director.
- (3) The regulations may provide that a person who contravenes any provision of the regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

53. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Tourism, Arts and the Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Tourism, Arts and the Environment.

53A. 2010 transitional provisions

Schedule 3 has effect.

54.

See Schedule 1 .

55. Legislation repealed

The legislation specified in Schedule 2 is repealed.

SCHEDULE 1 - Consequential Amendments

The amendments effected by Section 54 and this Schedule have been incorporated into the authorised version of the Crown Lands Act 1976 .

SCHEDULE 2 - Legislation repealed

Section 55

Litter Act 1973 (No. 13 of 1973)

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.